LABOUR-MANAGEMENT RELATIONS IN INDIA

K. N. SUBRAMANIAN



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To the Memory of
MY PARENTS

FOREWORD

THE SUBJECT of "Labour-Management Relations", in recent years, has rightly attracted the attention of scholars and persons with practical knowledge of industrial relations. The result is we find a large number of publications.

Subramanian who worked in the Labour Ministry, Government of India, for many years, had an important role to play in shaping the legislation and policies and also in evaluating the many complex problems concerning Employer-Employee relations. I had the pleasure of his working under me as Secretary of Labour when I was Minister during 1952-54 and I always relied on his suggestions and advice which were both sound and useful. As his publication reveals, he puts forth in a logical and detailed manner the various forces that operate on the industrial relations scene and in this process he has brought to light a lot of fresh information from documents and reports which hitherto have not been publicized.

Apart from an analysis of the history and growth of the Trade Union Movement in the country and of Labour-Management Relations, Subramanian has given many practical suggestions on the Trade Union Movement and Labour-Management Relations in the last two Chapters. These suggestions, I am sure, are very useful to those dealing with industrial relations problems to lay a strong and sound basis for the trade union movement in India and to foster good industrial relations—a prerequisite for assuring a faster economic growth

Labour in recent years has been called upon to shoulder major responsibilities in the ushering in of our national objective—the Socialist Pattern of Society. This demands of the workers to fulfil their duties and responsibilities to the community not as mere wage-earners but as partners in the industrial system and as citizens for building a more prosperous India. This is possible only if the trade unions set their house in order and rely on collective bargaining and mutual negotiations to solve differences and disputes. Subramanian's detailed description of the Law relating to labour and of the Trade Disputes Act provides one of the original and excellent analysis of the legal provisions. And the comparisons that he makes with the legal regulations governing labour-management relations and trade unions in other countries will help the reader to understand the course of events leading to the formation of strong and sound Unions abroad.

Subramanian, a seasoned administrator and a Member of the Indian Civil Service, has not only the knack of isolating the essential from the non-essential, but also possesses a keen sense of perception. The book, I am sure, will be one of the source materials to those interested in labour problems both here and abroad and to the students who want to know the history and

development of the trade union movement and the industrial relations problems. It is equally a practical guide which will be useful to trade union leaders and representatives of management to understand their respective responsibilities in furthering the cause of industrial relations. I commend his efforts and welcome this book as an important contribution on Labour-Management Relations.

V. V. GIRI

Raj Bhavan *Governor of Mysore*
Bangalore
(b. 1909)

PREFACE

THE FUTURE of our country lies in the success of her industrialization. The welfare state of today has much to do in many fields of public endeavour, but certain fields of activity have a significance all their own. Our success on the food and population fronts will decide whether the economy, and hence the democratic State, will remain stable or not, but it is our industry and technology that will decide whether the State will ever be able to get anywhere near the forefront of the leading nations of the world. The competition for world leadership between the two titanic nations of today, which has long gripped the imagination of the world and caused grave misgivings in some quarters, is but the continuation of the old race, though at a new pace, for progress and leadership that started with the very beginnings of mankind. Such a race, which has become increasingly critical and exciting since the termination of the Second World War because of the fantastic achievements in science and technology, cannot leave the newly-independent nations untouched.

The Industrial Revolution, now but a mere historical interlude, was in its time as fundamental and far-reaching—if not also awe-inspiring, for who indeed would not feel his pulse racing at the sight of a horseless carriage tearing along at the unheard-of speed of ten or even fifteen miles an hour?—as the taming of the atom or the conquest of space. When the United States of America threw off her colonial yoke and became independent, her first impulse was to remain a peaceful agricultural nation living contentedly in the countryside, tending her flocks and tilling her farms by honest toil and endeavour. Thomas Jefferson, third President (1801-09), who dreamt of a great rural republic wrote: "While we have land to labour, let us never wish to see our citizens occupied at the work bench or twirling a distaff." For the early Americans "it was to be a farmers' paradise, not a merchants', bankers', or industrialists' preserve."[1] Their outlook was not very different from that of Goldsmith who, but a generation earlier, had written nostalgically of the days "when every rood of ground maintained its man" and moaned:

"But a bold peasantry, their country's pride,
When once destroy'd, can never be supplied."

We now know how quickly and completely the United States had to give up her pastoral pleasures and pursuits for a civilization in which technology has enslaved one and all.

[1] Allan Nevins and Henry Steele Commager, *A Short History of the United States*, p. 261.

A century later, Lenin knew better than to be sentimental about the virtues of the rural republic. By that time the new technology had revolutionized human thought and outlook. Lenin deliberately, and from the very beginning of the foundation of Soviet Russia, set to transform her from a backward agrarian country into a prosperous industrial one. The GOELRO plan provided for the building of 30 district power stations of an aggregate 1,750,000 kW and an annual output of 8,800 million kWh—an altogether ambitious plan for the 1920's and for a Russia, the condition of which Lenin compared to that of "a man who had been beaten to within an inch of his life". Lenin defined communism as "Soviet power plus the electrification of the whole country." Such was the importance he attached to electrification as the foundation of industrialization. From the very beginning of the new State, and despite the total absence of resources, he started talking and planning in terms of the large-scale use of tractors on farms, of the mechanization of mines, of the use of mechanical means to relieve human drudgery, and so on. It is now a matter of history how thoroughly his successors carried out his plans for the industrialization of the country and the building up of a technology aimed at, in his own words, "catching up and surpassing the developed capitalist countries in the economic field".

Today no nation can hope to survive—much less become great—unless it is wedded to industry and technology. A backward agricultural nation bent on development has a big job trying to assemble the capital resources and technical know-how needed for a programme of rapid industrialization. Modern industry has become highly sophisticated and equally capital-intensive. After the last war a large number of states, particularly in Asia and in Africa, became independent more or less at the same time—all thirsting for development and clamouring for foreign capital and technology. As the resources that can be spared by the advanced nations are limited and wholly insufficient to meet all demands, the competition for attracting and retaining scarce resources is unprecedented. Developing nations that squander away their hard-earned resources through uneconomic use, waste, corruption or conspicuous consumption will be left with the wrecks of a future that might have been.

So our most important requirement for survival in a fiercely competitive world is rapid and efficient industrialization. History tells us that the high level of saving and investment needed for rapid development cannot, despite generous foreign assistance, be achieved except at the expense of current consumption and hence through substantial suffering and sacrifice. This lesson of history seems to have eluded us altogether, for how else are we to explain the sorry spectacle of group after group of the population—workers, technicians, engineers, doctors, teachers, scientists, government employees, industrialists and many others—clamouring for more wages, more remunera-

tion, more dividends, more facilities, and more incentives and enforcing their demands, often through violent destruction of public property and paralyzation of public activity? That every one of these groups may have strong grounds for laying claim to more remuneration because of the totally unchecked rise in prices may readily be conceded, but their action is none the less ill-advised, for if all or even a number of groups succeeded in squeezing more out of the system, they would only be giving yet another boost to inflation and putting another brake on national development. They are simply seeking relief from the symptoms rather than attacking the root cause of the trouble of soaring prices and incidentally securing a remedy which can only aggravate the disease.

Many State Governments have in recent weeks bought peace and popularity for the duration of the elections by agreeing to raise the rates of dearness allowance of their employees to the level of the Central Government rates. This means, according to one estimate, Rs. 100 crores more per year by way of the salaries of State Government employees. As the resourceful Central Government employees get their rates raised in turn, the whole lot of State Government employees will get a further move on. Needless to say that because of the large numbers involved, the gains will prove transient and will get dissipated in a further rise in prices that is inevitable within the next few weeks. The net result then would be that while Government employees would revert to their pre-rise financial predicament, they would have succeeded in pushing up the cost of living and thus ensured a further rise in dearness allowance to large numbers of employees in the private sector whose wages are linked to the cost of living. That would raise prices still further. Thus inflation would have been given a two-step boost in return for a short-lived satisfaction, and it would be a matter of conjecture whether one has really won or lost.

Many have in recent times talked of a wage freeze, but how many have talked in terms of a viable and integrated wages-dividends-incomes-prices national policy? It is only as these pages go to the press that the report of the Steering Group on Wages, Incomes and Prices set up by the Governor of the Reserve Bank in June 1964 has been published and people have been told that a framework for an incomes and prices policy is at last available. Without some measure of economic stability, of what use are our grandiose plans of development? That we have so far made only a poor success of our opportunities has been widely admitted. Our growth is stunted, our burdens mounting; our foreign friends are growing increasingly reluctant to underwrite our requirements of foreign exchange. It, therefore, goes without saying that it is for every one of us--management as well as labour—to make the most of what little resources we are able to coax or command. This cannot be done unless the two principal parties involved in the great adventure of production

are determined in their resolve that it is their business to achieve a steadily-mounting volume of production and that productivity will be the password for prosperity. All this will not be possible unless the parties are wise enough to build up sound labour-management relations based on mutual understanding and respect.

The present state of labour-management relations in India is unhappily not very satisfactory. With four central organizations of labour, each trying to form unions of its own persuasion, inter-union rivalry and squabbles are inevitably all too frequent. Indian labour has several excellent qualities. It is intelligent and can be taught to become skilful in an astonishingly short period. Foreign experts visiting our undertakings, big and small, are often amazed at the speed with which the purely rustic labour of yesterday can be developed into skilled hands. But this is not inexplicable. The inherited skills at handicrafts with which the peasant is blessed in abundance can easily be transformed into skills at machines. Indian labour is adaptable. Under proper conditions of work it can give an output which would not compare unfavourably with that of labour in highly industrialized countries. And yet, Indian labour as a whole is not contributing its best to the growth of the economy. There are many reasons for this unfortunate situation. It is the purpose of this book to enquire into some of them as objectively as possible.

Though a large number of matters have been considered in the book, there are some that stand out prominently. One such is the "outsider" problem which, in league with that of the intrusion of politics into trade unionism, has prevented the growth of an independent and self-reliant trade union movement. That the movement continues to be as wholly dependent on the outsider today as it was 40 years ago is itself the greatest criticism of the role played by the outsider. That the outsider has on occasions done good to the movement is no excuse for his making it his life's mission to chaperon labour for ever. Even a slow-growing ward has to come of age one day. Another fundamental matter which affects the settlement of disputes and the establishment of a sound relationship between the parties is the undue emphasis placed on compulsory adjudication to the detriment of collective bargaining. This has encouraged a litigious approach to labour-management relations where the judge and the lawyer must constantly interpose between the employer and the employee. Adjudication, which keeps the parties apart, has turned out to be a divisive force rather than a cohesive one. The democratic way of life demands that we practise collective bargaining in the field of labour-management relations. While other forms of adjustment of mutual relations might be permissible as short-term remedies for specific adverse situations, indefinite postponement of our commitment to the most important principle of industrial democracy cannot but imperil the foundations of democracy itself. Yet another matter which strikes the student of Indian industrial relations is the considerable harm that division in the ranks of

labour is causing to productivity. Four central organizations, going their different ways for ideological and other reasons, are proliferating unions which, for sheer survival, must constantly war with one another and enter into an unholy competition for squeezing out the last drop of substance that the system can be made to yield. In this war of tactics, wages must constantly go up and workloads down—an admirable aim for an affluent society in which workers are at a loss to know what to ask for next but not for a society struggling to maintain a measure of solvency. Consolidation of trade unionism through the formation of powerful national unions, statutory protection of unions against unfair labour practices, and election of the bargaining agent through the secret ballot are some of the measures indicated in the book for reducing the evils of proliferation and of rival unionism. But enough; let us not anticipate too much of what the text has to say.

While much of the book is largely policy-oriented and does not purport to be a detailed commentary on any particular law, it deals at sufficient length, and in the appropriate context, with many practical problems that confront management and labour in their day to day mutual relationship. These include questions frequently asked by the parties such as: (*i*) What are the differences between voluntary arbitration and compulsory adjudication in the matter of the rights of the parties? (*ii*) If an appropriate Government refuses to refer a dispute to conciliation or adjudication for inadequate or extraneous reasons, have the parties any judicial remedy? (*iii*) When punishment is imposed after a domestic enquiry into a misconduct, to what extent is an industrial tribunal entitled to substitute its own appreciation of the evidence for that of the management and to interfere with the punishment imposed? (*iv*) When workers go on strike, is the management entitled either to dismiss them after a formal enquiry or to replace them by other labour on a permanent basis? (*v*) What is the nature and extent of the relief that the parties can obtain through applications for writs or appeals by special leave in the Superior Courts? These and several other questions of every-day occurrence, legal as well as economic, have been answered, not as a series of questions and answers deliberately planned to meet a specific need but as the natural outcome of the study of labour-management problems in their logical context. It is, therefore, to be hoped that the book will find practical application in the solution of day to day labour-management problems.

The scheme of the book is that the first five chapters are devoted to a study of the growth, development, and current problems of trade unionism in the country. The next seven chapters deal with the labour-management relationship proper. The last two Chapters, namely, XIII and XIV, gather together the main threads of the earlier discussions of problems in the two fields of trade unionism and industrial relations and attempt to evolve

specific suggestions for future policy and action. These two chapters are by no means a summary of the rest of the book; but as they are concerned with the final summation of the more important problems, they may be deemed to constitute the heart of the book. As these chapters survey what was described earlier, the headings of the subjects already treated have had to be repeated in them, but it is believed that there has in general been little repetition of the matter already set out. Naturally each section of the survey must be read with the corresponding portion, if any, in the earlier chapters. If a reader is impatient to know "what it is all about", he is welcome to plunge straightway into Chapters XIII and XIV, which are largely self-contained, and then to get back to the beginning for the "whys and wherefores" of it all. Certain subjects like collective bargaining, voluntary arbitration, labour-management cooperation, the three Codes, etc., which have gained considerable currency in labour relations parlance, have been described at some length in order to enable the student and the general reader, who may not have ready access to specialized books, to gain a reasonably well-rounded knowledge of these matters. A note on the more recent happenings has been appended under the title of "Postscript". Eight appendices containing various voluntary codes and agreements, which the reader may find it difficult to lay hands upon, have also been added with the kind permission of the Central Labour Ministry.

Should any of my readers casually skimming these pages be left with the feeling that I have occasionally been far too outspoken in my criticisms, let him but remember that the picture I wish to see of the labour force of tomorrow is that of a solid phalanx of nation builders, endowed with health in their bodies, skill in their hands, and noble ambition in their minds and imbued with a sense of mission to wrest from the reluctant hands of nature its vast hidden bounties and to fashion them for the enjoyment, not of the privileged, but of the common man like themselves. Such a labour force will have its future secure in its own hands and will need neither patronage from the politician nor succour from the Samaritan.

The framework of the book was written in 1961 when I was still in the service of Government. For obvious reasons, it could not have been published then. The delay in its publication has, however, not been without its advantages, for I have since had an opportunity of visiting various universities and labour administrations in the United States of America and, for over three years, of getting directly involved in the day to day labour-management problems of an important industrial establishment in Bombay. While all this experience has been stimulating and invaluable, it is necessary to say that the main conclusions arrived at in 1961 have not undergone any material change as a result of the lessons learnt in the market place.

I am greatly indebted to Shri V. V. Giri, former Central Labour Minister and now Governor of Mysore, not only for his kindness in writing an

encouraging and illuminating foreword but for really opening my eyes, way back in 1952, to the fundamentals of industrial relations. It was his campaign for collective bargaining and voluntarism—the widely-known "Giri Approach" —that convinced me, then legalistically-minded, of the futility of excessive reliance on legislation and compulsion. If collective bargaining and voluntary arbitration have today acquired, at any rate, a measure of drawing room popularity—they are still somewhat unknown warriors in the field—it is largely due to Shri Giri's advocacy of voluntary methods and to his waging a ceaseless war against his old "Enemy No. 1", namely, compulsory adjudication. My thanks are, therefore, due to him in ample measure on more than one account.

My sincere thanks are also due to Dr. C. D. Deshmukh, Vice-Chancellor. Delhi University, Shri Naval H. Tata, President, The Employers' Federation of India, Dr. Jack Stieber and Professor Subbiah Kannappan, both of the Michigan State University, Professor Charles A. Myers of the Massachusetts Institute of Technology, Shri V. K. R. Menon, Director, I.L.O. Branch, New Delhi, Shri Raghunath Rao, formerly Assistant Director-General, I.L.O., Geneva, and Shri G. L. Bansal, Secretary-General, All India Organization of Industrial Employers, for reading through the draft of Chapters XIII and XIV and making many valuable suggestions thereon.

Shri Tek Chand Dewan of the Central Labour Ministry helped me with the typing of the bulk of the book—not once but twice. Shri R. Raman, Shri A. Parameswaran, and Mrs. S. N. Khatu of the Kamani Engineering Corporation Ltd. have also helped me considerably in getting the manuscript ready for the press. They have all done their jobs with a commendable degree of accuracy and neatness. To all of them my thanks are due.

Finally, I must sincerely thank the Kamani Brothers of Bombay, and in particular Shri P. R. Kamani, the head of the group of Kamani establishments, and Shri Navnit Kamani, with whom I have been privileged to work for some years past, for the keen interest taken by all of them in the completion of this work. Their encouragement has been invaluable. They have unstintingly supported me in making this small contribution to the industrialization of our country. Moreover the Kamani establishments, with their active and lively industrial relations, have proved an excellent laboratory for putting many a theoretical point stored up over the years to practical test.

The whole field of labour-management relations is in a state of flux. We are still in the stage of experimentation; policies and practices have not yet become crystallized to any great extent. Collective bargaining, as a way of life, is as yet only a hope for the future. It would, therefore, be rash on the part of a writer to claim that he has found the right solutions to all the problems afflicting industrial relations. All that one might hope to do is to focus attention on the major problems and to suggest possible lines of advance if only for the purpose of stimulating further thinking and research.

That is all that has been attempted in this book. There must necessarily be flaws and faults in a book written during such leisure time as could be snatched from the demands of a whole-time job held all along. Any suggestions for improvement of the book will be gratefully received at the address given below.

K. N. SUBRAMANIAN

33, *Ashoka Apartments*
68, *Nepean Sea Road*
Bombay-6
(b. 1909)

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LABOUR-MANAGEMENT RELATIONS IN INDIA

CHAPTER I

PRELUDE TO TRADE UNIONISM

THE HISTORY of the Indian trade union movement falls conveniently under three well-defined periods, namely, (*i*) the period prior to the First World War, (*ii*) the period between the two World Wars, and (*iii*) the period since Indian Independence. There was hardly any trade union movement in this country in the last century. During the early years of the present century a few spasmodic, but nevertheless praiseworthy, attempts were made by public-spirited persons interested in the welfare of labour to sow the seeds of this exotic plant which had already taken firm root and grown up vigorously in the West but was as yet alien to Indian soil. It was only after the turmoils of the First World War, which brought about a wide awakening in the outlook of mankind and a deep yearning in man for freedom and the right of self-determination, that the seeds germinated into what seemed at first sight a promising, if slow-growing, plant. And yet because of the unhealthy waters of political intrusion and interference poured on its roots, the growth of the plant soon became stunted. Ideological differences among the leaders split the movement and inevitably led to an era of internecine warfare. It was, therefore, only in the post-Independence period that the plant could at all hope to put forth fresh and healthy blossoms and to grow up as being no longer foreign to the Indian soil. It will be the purpose of this study to examine how far this hope has been fulfilled.

Guilds not the Precursor of Trade Unions: Almost in any study of trade unionism the temptation is strong to start with a comparison of the modern trade union with the mediaeval guild and to call the latter the precursor of modern trade unionism. But if we look upon the trade union as an association of wage earners formed for the purpose of protecting and advancing their economic interests and the terms and conditions of their employment, it would be difficult to say that the guild, even in western countries, discharged any such function. The mediaeval guild was a craft guild composed of the members practising the craft. It was established primarily for protecting its members against the inroads made into the craft by "foreigners" and enforcing appropriate standards of skill among them through the compulsion of a strict apprenticeship and the insistence of a high quality of workmanship. The guild also performed certain fraternal functions such as the grant of financial assistance and of a small measure of financial security to its members. It was nevertheless an association largely, if not wholly, of "masters", that is, of owners of establishments, and though it included apprentices and journeymen

working for the time being with masters, it was not an organization for regulating the relationship between masters and servants. All those complicated, and sometimes grim, relationships between employers and workers which are politely covered up by the term 'industrial relations' in modern terminology were unknown in masters' establishments. Journeymen fraternities sought few remedies against masters' guilds. Neither masters' guilds nor journeymen fraternities were trade unions in the modern sense of the term. The mere fact that guilds too had rules regarding their functioning, which were somewhat similar to those of trade unions, would not justify our looking upon them as trade unions.

In India too, the position was no different. The numerous castes which sprouted from the four-fold classification of Manu were in a way professional guilds. But Indian guilds, as they developed subsequently, were not watertight compartments of castes. Men of different castes were often found in a trade and they joined together to form a guild. The guild or 'sreni', as it was called, was a form of industrial and mercantile organization. It had very considerable powers over its members. It regulated standards and qualities and stipulated the prices of the commodities manufactured or dealt with by its members. There was thus some measure of quality and price control. It also fixed the hours of work for members and the quantum of work to be done by each member during those hours so that there would be no unhealthy competition among them. Restrictions on output practised by many modern unions in ways direct as well as devious, which constitute the most common make-work practice, have thus a hoary tradition dating back to the days of the guild. Often the guild had judicial rights over its members and its regulations had the force of law, recognized and upheld by the King and the Government. The majority of Indian guilds were concerned as much with social affairs as with economic matters. Guild courts were powerful tribunals regulating both the work and conduct of their members. Guilds regulated commercial and service activities too. There were, for instance, several guilds of manual labourers. It was the duty of the guild to fix appropriate wages so that its members would not accept, or be paid, a lower wage. This was a sort of minimum wage regulation by a public authority. The main point to be noted, however, is that there was in the guild no element of collective bargaining over wages and conditions of service between employers and workers as in a modern trade union. If the essential relationship between employer and employee was wanting, the guild would not be a trade union in the modern sense of that term.

Recognizing Traits of a Trade Union: Before we enquire when a proper trade union movement originated in India, we should know the distinguishing characteristics of a modern trade union so that we may be able to recognize one when we come across it.

By legal definition, the expression 'trade union' includes, contrary to popular belief, both employers' and workers' organizations. The Indian Trade Unions Act, 1926 defines a trade union as "any combination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers, or for imposing restrictive conditions on the conduct of any trade or business, and includes any federation of two or more trade unions." This definition includes a combination of employers for the purpose of regulating the relations either between them and their workmen or between them and other employers. The Employers' Federation of India got itself registered as a trade union a few years ago. In the United Kingdom too, the definition of 'trade union' includes an employers' organization. But, for the purpose of this study, we would be concerned only, or at any rate primarily, with organizations of workers. The nature and characteristics of trade unions will necessarily depend on the ideologies motivating the trade union movement. The trade union in a totalitarian economy is obviously different in many respects from a trade union in a democracy. For our present purpose, it would be sufficient to confine ourselves to unions of the latter type. The trade union, as we have already seen, is an association of workers. Some definitions lay stress on such association being continuous — obviously to exclude from the purview of the definition purely *ad hoc* associations brought into existence for a limited or fleeting purpose. The object of the trade union —and this is its most important recognizing trait—is to protect and advance (or to maintain and improve) the terms and conditions of employment of its members and generally the members' economic and social interests. The general aim is to improve the status and standing, the efficiency, and the interests of workers in relation to their work and living. While the bulk of the activities of a trade union would, no doubt, be concerned with the negotiation and settlement of the terms of remuneration and the conditions of employment of its members, that is, by no means, the only sphere of activity of a trade union. Before the State assumed responsibility for social security, this was one of the important functions of trade unions in their capacity as friendly societies. In fact, it would not be incorrect to say that friendly societies and similar mutual-aid associations gradually transformed themselves into modern trade unions when the law and the public conscience permitted them to protest collectively against the more oppressive disabilities of their members. Though social security is not an important function of trade unions these days, various other types of welfare activities are still within their purview. Of these the education of members is one of the more important—education of all types, namely, to make the rank and file literate, to make the members union-conscious, and to create trade union leaders out of the more promising and enthusiastic members. A trade union, as we have seen, promotes the economic and social interests of its members. Experience the world

over has shown that for such promotion to be effective, trade unions may often have to pull the appropriate political strings. Making use of politics without necessarily participating in it, or getting engulfed by it, with a view to achieving the objectives of trade unionism has been found both necessary and fruitful even by organizations which are firmly opposed to the intrusion of politics in the trade union movement. Legislation may often help to forge the weapons necessary for trade union functioning and growth. No doubt collective bargaining is the sheet anchor of progressive trade unions in democratic countries, but it may have to be supported and supplemented by other measures such as arbitration or even direct action. If in respect of any particular demand a trial of strength could be avoided by getting the community at large to sponsor appropriate legislative measures, nothing would be more desirable from the point of view of the trade union. Hence the trade union movement cannot look askance at legislative support for attaining specific objectives.

It is these objectives of a trade union, extended and enlarged from time to time, that the British Trades Union Congress Interim Report on Post War Reconstruction summarized as: (*i*) maintaining and improving wages, hours, and conditions of labour, (*ii*) evolving measures for securing full employment for workers, and (*iii*) extension of the influence of the work-people over the policy and purpose of industry and to arrange for their participation in its management.

These distinguishing characteristics of a trade union, as understood in democratic countries, must necessarily apply to trade unions in India, for we have borrowed many of our concepts in the field of industrial relations from western countries and utilized many of their methods. The emergence of India as a Sovereign Democratic Republic, patterned largely in essentials after the democracies of the West, has made it even more imperative than before that we learn the lessons of the older democracies in dealing with our industrial relations problems. Now that we have some of the distinguishing characteristics of a trade union, we might apply them to find out roughly when a regular trade union movement took root in India.

Climate for Trade Unionism: Trade unionism has been one of the first fruits of the industrial revolution the world over. So long as industrial production remained in the hands of a number of independent master craftsmen and artisans, each working on his own or with the help of a limited number of apprentices, journeymen, or even hired labour, the problem of conflict between the employer and the employee was never serious. It was largely a family affair, the disputes being settled by the common sense rule of 'give and take'. The manufactured products were generally sold in nearby markets, and violent economic fluctuations and upheavals, so characteristic of the complex economic system of today, were seldom encountered. Retrenchments, closures,

and wage cuts were never a nightmare to the employed. All this was completely changed by the industrial revolution which led to the concentration of production in large factories. The employment of a large amount of capital, the engagement of a vast army of labour, the installation of a large number of complicated machines requiring repairs and replacements, and the production of a large output to cater for markets far and wide created problems which had never arisen in the age of handicrafts. It was soon discovered that any one of several developments, such as an increase in the volume of production or a decrease in the demand either for home consumption or for export, was sufficient to throw the economics of production out of gear. Profits tumbled down and frantic efforts at economy by the management were the first warnings to workers that something was amiss. Employers soon found that one of the obvious methods of effecting economy was to reduce the number of workers, to increase the workload, and at the same time to cut down wages. Workers were rudely awakened from their care-free slumber to a full realization of the dangers wrought by a situation which apparently seemed to leave employers almost untouched. Why should they be beaten down to the verge of starvation, they argued, when employers continued to live an insulated life of luxury and ease? Revolt against the tyranny of the capitalist system and search for a means of self-preservation through the only weapon available to workers, namely, the power of combination, led to the inevitable consequence, namely, the formation of trade unions. Trade unions thus started as continuing defence pacts among workers against the inroads made into their rights and standards of living by the exigencies of capitalist self-interest.

Marxist Attitude towards Trade Unionism: It might be as well to explain right at the beginning the difference between communism and parliamentary democracy in their outlook towards trade unionism. This difference must constantly be borne in mind in assessing the attitudes of the various central organizations of labour in present-day India to industrial relations, principles and techniques.

Though trade unions came into existence for the defence of workers against the excesses of capitalism, they were obviously part of the capitalist system of production—an attempt to harmonize the antagonistic interests of capital and of labour. Since Marxism's professed intentions, which "the Communists disdain to conceal", are to do away with capitalism "by the forcible overthrow of all existing social conditions", it has certainly no faith in trade unionism except as a means of organizing labour in the proletariat's class war against the bourgeoisie. Bernard Shaw brings out this aspect of a trade union's functions when he says in his 'Intelligent Woman's Guide to Socialism, etc.' that "Trade unionists . . . have no objection to the continuance of the capitalist method in industry provided that labour gets the lion's share."

Lenin classified trade unionism of the English pattern as "Opportunism", which, along with its allied manifestations such as "Economism", "Bernsteinism", etc., he fought to the last. Speaking of Economists, he said that they confined the tasks of the working class movement to a purely trade union, economic struggle against the employers and the government, for better conditions of labour within the framework of bourgeois society. Such a reformist policy, he declared, would lead to the preservation of capitalist wage slavery for long years to come. "The Social-Democrat's ideal", Lenin wrote, "should not be the trade union secretary, but the tribune of the people, who is able to react to every manifestation of tyranny and oppression, no matter where it appears, etc."

His antagonism towards the bourgeois-supported trade unions did not prevent Lenin from using them as centres of revolution in 1917. By then he had, no doubt, indoctrinated them with a different outlook.

In May 1920 a delegation of British workers visited Soviet Russia. In his "Letter to the British Workers", which he handed over to them to take back to Britain, Lenin branded the "reactionary" trade union leaders as "faithful servants of the capitalists."

In Soviet Russia the so-called trade unions have functions wholly different from those of trade unions in western democracies.

Transition from Clubs to Unions: Trade unionism in its proper form brings relief to workers and by reducing the evils of capitalism permits capital and labour to co-exist. It is thus a safety valve which controls and eases the tensions of some of the worst features of capitalism. It is true that there were unions of a sort even before the industrial revolution, but trade unionism, as a power to be reckoned with, followed in its wake. In the United Kingdom, for instance, there were, both before and during the early stages of the industrial revolution, friendly clubs of journeymen meeting partly for social intercourse and partly for rendering mutual assistance in sickness and unemployment. When the new industrial closures took their toll and revealed their potentialities for mischief in the matter of wage cuts, high work-loads, retrenchments and similar consequences, several of these friendly clubs got together and formed unions in defence of their common interest. At first such cooperation between clubs was for a specific purpose as, for example, to resist a particular wage cut, to prevent the employment of unapprenticed workers, or to fight a threatened night work or overtime. After the object was achieved, the union dissolved itself leaving behind only the constituent clubs. Occasions for such combination and dissolution, however, became more frequent as time passed and workers decided that it was better for them to form strong and permanent unions backed by the weight and support of large numbers of workers engaged under several employers than to remain content with forming social clubs for recreation and ineffective mutual assistance. The main objec-

tives of association passed from social issues to economic issues. The evils of capitalism sometimes became so oppressive in those early days that the Grand National Consolidated Trades' Union in the United Kingdom resolved as early as 1833-34 that one of its objectives was "the entire replacement of capitalism by a system of cooperative socialism."

In the United States of America, though craft societies came into existence even before the advent of the factory system for the protection of the native-born skilled workers against competition from new immigrants, they did not develop into powerful unions until much later. It was only in the 1850's that several of the present-day national unions had their origin.

In order to understand the process of development of trade unions in India, it is necessary to view it against the background of the industrial development of the country. Industrialization in India was a slow and halting process of transplantation of the techniques adopted in industrialized countries. The remedies against the evils brought in by the new system, therefore, developed only very slowly.

First Steps in Industrialization: Though the first cotton textile mill, namely, the Bombay Spinning and Weaving Company, was established in 1851, it did not start working until 1854. The progress of the industry during the decade 1860-70 was slow and unsatisfactory. The main reason for the slow progress of this essential industry appears to have been the high price of cotton on account of the American Civil War. This period also witnessed severe trade depression in Bombay. By 1872-73 there were only 18 cotton mills in the Bombay Presidency and two in Bengal. Shortly thereafter the number of mills increased rapidly and by 1879 there were 56 mills employing 43,000 workers and working 1,453,000 spindles and 13,000 looms. Progress thereafter was rapid as the following figures[1] show:

	1879-80	*1889-90*	*1900-01*	*1913-14*
No. of mills	58	114	194	264
Persons employed	39,537	99,224	156,535	260,847
No. of looms	13,307	22,078	40,542	96,688
No. of spindles	1,407,830	2,934,637	4,942,290	6,620,576

The first jute mill was established at Serampore in 1854. Progress during the next decade was practically negligible; only one more mill was put up during that period. Thereafter the progress was encouraging. By 1879-80 there were 22 mills employing 27,494 workers with 4,946 looms and 70,840 spindles. The further progress was as follows:[2]

[1] D. R. Gadgil: *Industrial Evolution of India*, p. 76.
[2] D. R. Gadgil: *Industrial Evolution of India*, p. 79.

	1889-90	1901-02	1913-14
No. of mills	27	36	64
No. of persons employed	62,739	114,795	216,288
No. of looms	8,204	16,119	36,050
No. of spindles	164,245	331,382	744,289

Though the first coal-mine was opened in the Ranigunj Coal-field in 1820, coal-mining made very slow progress until about the middle of the 19th century. In 1854, there were only four collieries in that coal-field. The construction of a railway line in that year gave a great impetus to the opening up of the coal-field. By 1879-80 there were as many as 56 mines in the Ranigunj area. As railways were extended to other coal-fields, coal-mining progressed rapidly all over the country.

To sum up, industrial development, which made a beginning in the 1850's, made somewhat slow progress during the next two decades or so, that is, roughly till about 1875. During this quarter of a century the number of industrial workers attracted to urban centres from rural areas was comparatively small, and even that limited labour force was a highly unstable and migratory one. There was little permanent commitment to industry during this formative stage. The exodus to cities, which was to become a marked feature of the industrial system in future years, had not as yet started. Though a number of industrial problems must have arisen even during the early years, workers were far too inexperienced and uncertain of their position either to revolt against hardships or to seek remedies. No doubt the working conditions proved too oppressive for some of them, but the easiest way to secure relief was for workers to go back to their villages and to return to the factory only when the pangs of hunger got the better of the terrors of factory working.

First Signs of Public Interest in Factory Workers: Within two decades of the first establishment of factories, the unbridled exploitation of labour had reached such unbearable limits as to invite public attention and criticism. Major Moore, Inspector-in-Chief of the Bombay Cotton Department, wrote in his Administration Report for 1872-73 that the hours of work of cotton mills had not been subjected to any regulation, that the working day was undoubtedly long, that women and children had been employed in large numbers, and that as the work was fatiguing, it was desirable to regulate the hours of labour of women and children. Major J. A. Ballard, Mint Master, Bombay, also called attention to the necessity for a Factory Act to control the hours of work of women and children. The Secretary of State for India took notice of Major Moore's report and in 1875 drew the attention of the Bombay Government to the need for action. The Secretary of State mentioned

that he had received other representations too regarding the condition of Indian labour. On 30 July 1875, Lord Shaftesbury, who had taken a pioneering hand in getting sound factory legislation enacted in Great Britain, raised the question of the plight of the Indian worker in factories in the House of Lords. He said: "The National Indian Association point out all the evils from which the operatives are suffering—a repetition of the evils which used to harass and destroy our factory operatives at home—terrible exhaustion, dust, 16 or 17 hours a day of unremitting labour, and a temperature varying from 90 to 100 degrees. And they propose the same remedies." The Secretary of State, The Marquis of Salisbury, replied that he had already written to the Bombay Government on the subject, having come to know of the evils of the system from Miss Carpenter, founder of the National Indian Association. Miss Carpenter had visited India a few years earlier and made enquiries into the condition of Indian labour.

About the same time a number of social reformers of Bombay under the leadership of Sorabji Shapurji Bengallee took upon themselves the responsibility of drawing public attention to the terrible working conditions obtaining in factories. In particular, they drew attention to the inhuman conditions under which women and children were required to work in factories.

It is clear that long before Indian trade unionism came into existence, sympathetic welfare workers, both Indian and foreign, had taken upon themselves the task of finding remedies for the evils brought about by industrialization.

The Bombay Factory Commission, 1875: As a result of these developments, and in fact even before receipt of the Secretary of State's despatch of March 1875, the Government of Bombay set up a Commission with F. F. Arbuthnot, Collector of Bombay, as President and eight other persons including a doctor, a lawyer, and four directors of cotton spinning and weaving companies as members. Unlike present-day tripartite labour commissions and committees, the 1875 Commission did not include any representatives of labour, obviously because no such representatives were available or had been recognized. Labour was the object of the attentions of others but not of itself or of any labour leader. The terms of reference of the Commission were: "To enquire into and report on the present condition and system of work in the factories of Bombay and its vicinity, with a view to determining whether any legislation is necessary for the regulation of the hours of labour, especially in the case of women, young persons and children, for the protection of labourers against accidents, for the proper ventilation and sanitation of the factories, and generally for improving the condition of the work people employed."

The unanimous conclusions of the Commission on the prevailing conditions of work in factories were as follows:

(*i*) As a rule, all machinery was duly protected but some portions might

not be sufficiently protected. Protection was both necessary and desirable.

(*ii*) Eight years appeared to be the general age given as that of the youngest children employed in the mills, but some witnesses had stated their age to be as low as 5 or 6 years.

(*iii*) The hours of work were from sunrise to sunset with half an hour of rest in the middle of the day. The children were on the premises of the factories all the time, alternately working and resting.

(*iv*) There were no fixed number of holidays in any factory. One factory closed on every Sunday in the month, another on every other Sunday, and a third on one Sunday in the month. In addition, native holidays were also given. On an average, the factories worked from 300 to 320 days in the year from sunrise to sunset.

(*v*) The health of the operatives was good and they did not suffer from the long hours except in some of the cotton press factories, where for three months in the year the work was exceptionally heavy and trying.

(*vi*) Ventilation had not received the attention it deserved.

(*vii*) Gratuitous schooling was given in a small way in two of the factories but not in others.

The President, Arbuthnot, and one other member, Dr. Blaney, recommended that a simple legislation, applicable to the whole of India, be passed by the Government of India on the following lines:

(*i*) Machinery should be protected.

(*ii*) Children should not be employed under 8 years of age.

(*iii*) Children between the years 8 and 14 should not be made to work for more than 8 hours daily.

(*iv*) The hours of work of workmen in general should not exceed 12 hours a day which should include one hour of rest.

(*v*) All factories should be closed one day in seven, the day of closing being left to be fixed as the owners and operatives might wish; other holidays might be given at the option of the owners and operatives.

(*vi*) Good drinking water should be provided in every factory.

Four of the remaining members (two having resigned due to departure for Europe) were of the opinion that "legislation in any shape is not necessary." They said that legislation "is calculated to check an important and new industry while it is yet in its infancy—a state in which it stands in special need of delicate handling and of all such influences and encouragement as may lead to promote its steady and healthy growth." Posing a question as to how a simple legislation might operate as a deterrent, the dissenting members said "that it has been a characteristic of the mercantile as well as humbler classes of this country to avoid, as much as possible, direct contact with Govern-

ment and its executive officers and consequently they would rather keep aloof from those undertakings in which they apprehend interference and annoyance from this quarter." Thus the dissident members well and truly laid the foundations of those specious twin arguments regarding the choking of a new industry and the undesirability of contact with, or intervention by, Government which were to be put forward by vested interests time and again in the future whenever any legislative or governmental interference was anticipated. Bureaucracy and red tape held their terror to businessmen even in those early days when Government intervention in business was purely nominal. The dissenting members also said that "it is more to the advantage of these work people that they should be left to themselves in the matter unless there is a great evil or abuse which calls for interference." Apparently what the Commission noticed did not strike these members as any "great evil or abuse."

The Lieutenant Governor of Bengal, Sir Richard Temple, who had enquiries made in his Province came to the conclusion that though the working hours were long, there was no complaint from workers generally and that it would be very proper to regulate by legislation the hours of women and children and the ages at which employment should be gained. He would not go any further in the matter of legislation.

The Bombay Government which was responsible for setting up the Commission of 1875 were themselves not immediately in favour of legislation but by 1878, when Sir Richard Temple became Governor of Bombay, the Government was prepared to support a private Bill prepared by Sorabji Shapurji Bengallee.

The Factory Bill, 1877: Even before the private Bill of Sorabji Bengallee appeared, the Government of India had prepared a Bill in September 1877. It restricted the daily hours of work of young persons to 8 and of children to 6. Young persons and children were to be prevented from cleaning machinery in motion. Young persons were defined as those between 12 and 16 years of age and children as those under 12. Children below 7 were to be disallowed in factories immediately, that is, during 1879, and those under 8 after 1879. Provision was to be made for fencing machinery and for reporting injuries. Inspectors were to be appointed. Establishments engaged in specified processes were covered by the Bill, irrespective of the number of persons employed. The final draft of the Bill did not contain any provisions restricting the hours of work for women.

The official Bill evoked protest particularly from Bengal. The Bengal Chamber of Commerce said that the measures would adversely affect children who were sought to be protected. They said: "The legislature, we beg to request, can do them (children) no good by turning them out and virtually leaving them to steal or beg or starve. There are not wanting orphans even, who have hitherto found a welcome abode in factories and have no homes

where to return on their removal from them." The Bill was introduced in the Governor General's Council in November 1879 with two changes, namely, (*i*) that the Act would be applicable only to those parts of British India to which it was specifically extended by the Local Government, and (*ii*) that only manufacturing establishments employing at least 50 persons were to be covered by the Act. Even with these modifications, the opposition to the Bill continued.

The Select Committee removed the purely permissive nature of the Bill remarking that it would be unjust to allow the factories of one Province to be subjected to restrictions and to leave those of other Provinces untouched. The amended Bill restricted the definition of 'factory' (*i*) by prescribing the minimum number of workers for coverage as 100, (*ii*) by excluding establishments which did not work for more than four months in the year, and (*iii*) by excluding establishments which did not use mechanical power. The class of young persons was abolished and the upper age of children was fixed at 14. Four holidays a month were to be given to children. In the final passing of the Bill, the lower and upper ages of permitted children were changed from 8 and 14 to 7 and 12. The Bill was eventually passed into law which came into force on 1 July 1881.

The Indian Factory Act, 1881: Thus the first Indian Factory Act enacted in 1881 resulted in the watering down of many of the original intentions substantially. The definition of factory was greatly restricted; the lower and upper ages of permitted children were fixed as low as 7 and 12; and children were permitted to work 9 hours a day. On the whole, apart from the provisions for the protection of machinery and the supply of drinking water to operatives, the Act was really a children's welfare enactment.

The Government of India and the Government of Bombay soon realized that the Act of 1881 was wholly inadequate to cope with the evils that were rampant. Some time after the law was passed, the Government of India wrote to Local Governments that "in deference to the opinions of many of the Local Governments and public bodies and associations consulted, the restrictions which were at first thought necessary have been materially relaxed" and that "in the reduction to 7 years of the minimum age at which a child may be employed, the Governor General in Council does not yet feel sure that relaxation may not have been carried too far."

Though most Local Governments entrusted the work of inspection under the Act to District Officers, the Government of Bombay obtained the services of an English Inspector of Factories, Meade King, who promptly recommended a number of vital changes in the law. He suggested abolition of the limit of 100 persons for the applicability of the Act, alteration of the lower and upper limits of the ages of children to 8 and 13, limitation of children's working hours to 6, creation of a class of 'young persons' and limitation of their hours

of labour, restriction of the hours of work for women, and insertion of provisions relating to sanitation.

The Bombay Factories Commission, 1884: When Meade King's proposals were communicated to the Government of India and by them to other Provincial Governments, there was again violent opposition from the Government of Bengal. The Government of India were reluctant so soon to sponsor a fresh enactment and left the matter to the initiative of the Bombay Government. The Bombay Government had strong feelings in the matter, and they felt that they would be justified, if need be, in introducing a Special Bill applicable only to the Bombay Presidency. Before doing so, however, they wanted to ascertain the latest developments and for that purpose set up a second Factories Commission in 1884 with W. B. Mulock, I.C.S., Collector of Bombay, as Chairman. The Resolution setting up the Commission referred to the provisions of the Indian Factory Act, 1881 as being "gravely and palpably inadequate." It further said that the provisions of the Act "were insufficient for the due protection of the operatives, notably the children, employed in the factories" and that the restriction which exempted from the operation of the Act all factories in which less than 100 persons were employed "mars the utility of the measure by removing from its scope the class of factories which stands most in need of careful supervision and of improvement in the arrangements concerning sanitation, machinery and other matters." It will be remembered that the Act of 1881 protected only children under 12 and that too only partially. Young persons above 12, women and adults were all left out of the picture. Thus these persons could be worked for most of the 24 hours of the day. They were not given any weekly rest day, had no hopes of any annual leave, and were left to the whims and fancies of the persons controlling the establishments. Jones, Inspector of Factories, who had earlier served as a Factory Inspector in England for 13½ years, gave evidence before the Commission "that every manager and overlooker I have sounded on this subject bewail the want of a day's rest and have entreated me for the sake of themselves and their hands to do all I could to induce the Government to make stoppage compulsory four days a month." He added that women and young persons who invariably worked 86 hours a week in summer and 77 hours a week in winter should be asked to work no more than 66 hours a week spread over six days. He felt 9 hours a day much too long for children and recommended a reduction by 1½ or two hours.

Giving evidence before the Commission, James Herbert Dunkerly, Manager of the Empress Mills, said that the Factory Act, 1881 had ensured the better protection of machinery but that "it has not answered its purpose with regard to the employment of children." He frankly admitted that owing to the 9-hour clause, children had been dismissed from his mill and several other

mills. He expressed himself in favour of a weekly closure of mills but not in favour of curtailing the hours of an ordinary working day. Several of the managers who were examined were in favour of a working day from 6 a.m. to 6 p.m. with an hour's interval for rest and of a weekly rest day. Dinshaw Manockji Petit, owner of seven important mills and Chairman and Director of several other companies, went to great lengths to show that "mill labourers who all have to do their work in well-protected sheds have easier work than other classes of workers" and proceeded to enumerate a long list of such classes of workers including vegetable and fish sellers coming from long distances. He felt that no further legislation was necessary and that though mills should be closed down on four days in a month, no special legislative protection was necessary for women or young persons.

Narayan Meghaji Lokhande, who had whipped up an agitation at two public meetings in September 1884 and had hastily organized the Millhands' Association for the specific purpose of making representations to the Commission, also appeared as a witness. He described himself as the Editor of the *Dinbandhu* newspaper and the Chairman of the Millhands' Association. He, however, promptly added that he was not there to represent the men who had taken part in the agitation meetings but that he was there "as an independent witness"—as if to suggest that he should not be looked down upon as a mere agitator. His demands were, however, by no means excessive or exaggerated. For women and young persons, he suggested a 66-hour week exclusive of the lunch interval—which was what the Commission later on recommended. He suggested that mills should be closed on all Sundays so that this would be an amenity common to all workers. For children, he felt 9 hours too long. He suggested 6 hours with half an hour's interval. He defined children as those between 8 and 12 years of age as against 9 and 14 years subsequently recommended by the Commission.

It was in the small factories, particularly ginning and pressing factories. that the Commission found the most appalling conditions. They wrote in their Report as follows: "These establishments generally employ less than 100 hands, of whom, more especially in the ginning works, the majority are women and children. They work intermittently or spasmodically, according to fluctuations in the market and on emergent orders for cotton from Bombay. Their usual working hours are from 4 or 5 a.m. to 7, 8 or 9 p.m. but when working at high pressure, they work sometimes day and night for eight days consecutively until the hands are tired out and lose their health."

The Commission quoted a truthful employer's (Rastamji Framji Wadia) evidence as an eye-opener: "Both the men and women come to the factories at 3 a.m. as they have no idea of the time and they wish to make sure that they are at the factory by the time it opens, that is, 4 a.m. I have 40 gins in one of my factories at Pachora and I have only 40 women attending these 40 gins. I have only 8 spare women. I never allow these women off the gins.

I am not alone in this respect; it is the general system. There is no change of hands except at meal times. The hands that work from 4 a.m. till 10 p.m. are paid from 3 to 4 annas per day."

The Commission observed that "male adults have always been considered to be outside the principle of protection afforded by factory law" and that following the experience of the working of the English factory law, they would not recommend any legislative interference with the labour of adult males. They carried this question of principle to such extreme limits as to refuse to provide for a weekly rest day even though there was almost unanimity of opinion on that matter. The Commission also felt that as they were raising the lower and upper ages of children to 9 and 14, they did not see their way to recommend the creation of a third class of protected labourers, that is, young persons under 16 years of age.

In the result the main recommendations made by the Commission were:

(*i*) that factories should be whitewashed every 14 months and painted every 7 years and that there should be adequate ventilation by means of fans;

(*ii*) that no child of less than 9 years of age should be employed in a factory and that no child below 14 years should be allowed to work for more than 9 hours a day exclusive of one hour's interval for rest, that is, 54 hours a week;

(*iii*) that no woman should be employed in a factory for more than 11 hours a day, exclusive of one hour's interval for rest, or beyond daylight;

(*iv*) that women and children should be granted four days' holidays in each month, the days being fixed and notified by Government;

(*v*) that the obstruction of an Inspector in the performance of his duties should be punishable by law;

(*vi*) that no child should be employed in a factory unless certified by a Certifying Surgeon to be of the prescribed age and physically fit;

(*vii*) that certain registers should be maintained and summaries published; and

(*viii*) that all factories in which not less than 10 women or children were employed, in which steam, water or other mechanical power was used, or where manual labour was exercised, should be brought under the operation of the Factory Act, irrespective of the total number of hands employed or the number of days in the year during which the factory was worked.

The Governor-in-Council accepted most of these recommendations. A curious recommendation of the Commission that the lower age of 9 prescribed for children could be reduced to 8 if the child had fulfilled a certain

educational test was rejected by the Governor with the humorous remark that "attendance at school may educate the mind but it does not necessarily educate the body." But strangely enough a similar suggestion that the age limit of 14 could be reduced to 13 to enable a boy to be deemed an adult in the event of his possessing "a certain amount of literary knowledge" was accepted by the Governor who observed that the proposal was based on the provisions of Section 26 of 41 Victoria, Cap, 16 and that "it has been offered spontaneously by the Commission after full deliberation and merits favourable consideration."

Though the Report of the Commission was almost unanimous, two of the members, Sorabji Shapurji Bengallee and Thomas Blaney, urged the need to provide a weekly day of rest statutorily for adult male workers. Countering the point that such a regulation in favour of male workers was not found in the English law, they said: "Adult males employed in textile factories in Great Britain had obtained their Sunday rest without legal enforcement, and if male mill hands in India were similarly situated, legislation on their behalf would be unnecessary. It remains to be seen whether or not in the event of millowners in England refusing, as is the case in India, to allow the adult male employees a Sunday holiday, the British Parliament would delay immediate steps to enact a law to remedy the evil."

Referring to this demand, the Governor observed that although it was beneficial for both men and women, he hesitated to support a proposal "which would be an anomaly in British legislation and be difficult of general application." Time and again a situation like this repeats itself; the British Ruler's sense of values is a matter more of discipline than of common sense and he is not prepared to go beyond what the Mother of Parliaments has thought fit to legislate even when he realizes that the conditions in India are quite different from those obtaining at home. In one respect the Governor was prepared to go even further than the Commission. While he accepted the Commission's recommendation that the Factories Act should apply to all establishments employing a minimum of 10 women and children, he said that it should apply also to establishments where 20 persons in all were employed whether partly women and children or all male adults. In the case of an establishment employing only male adults, the Act would have ensured only "efficient protection from preventible accidents and injury to health."

Though the recommendations of the Commission were transmitted to the Government of India, the latter were not prepared just then to undertake revision of the 1881 Act. The Government of Bombay too found it impracticable to undertake a purely local legislation which would have led to factories in the Bombay Presidency being discriminated against and seriously handicapped.

Meanwhile, James Jones, an English Factory Inspector, who had served

as Special Inspector to the Bombay Government and as Secretary to the 1884 Bombay Commission returned to England and submitted a report on conditions in the Bombay factories to his Chief Inspector in England. His general conclusion was: " ...the question of Sunday labour, long hours of work for children, sanitation and more regular meal hours ought to receive the prompt attention of the Home Government, for in these particulars under the present system glaring hardships are inflicted.... The question of factory legislation has been shelved and some time must elapse before another effort will be made, unless pressure be brought to bear from the Home Government."

In July 1888, two members of Parliament asked questions in the House of Commons whether it would not be expedient to extend the English Factory Acts to India. The Secretary of State drew attention to Jones's Report and said that he had invited the attention of the Government of India to the desirability of making the Indian law more stringent. Even though the Government of India were not in a great hurry to go ahead with fresh legislation, the Secretary of State's pressure had its desired effect on them. In March 1889, the Government of India forwarded to the Secretary of State proposals for modification of the existing Act. Three important provisions were suggested, namely, (*i*) reduction of the number of workers for coverage to 20, (*ii*) raising of the lower age of children to 9, and (*iii*) restriction of the hours of work for women to 11.

The Government of India were not agreeable to providing a minimum number of holidays even in the case of women. The Secretary of State, however, directed that four holidays in a month should be provided for women. When this correspondence was published, male workers in Bombay pressed for statutory holidays for themselves also.

The Factory Bill, 1890: A Bill was eventually introduced in the Governor General's Council in January 1890 incorporating the provisions settled with the Secretary of State and also a few others relating to sanitation and statistics. It immediately drew loud protests from all over India except Bombay. Bengal protested most, particularly against the provision raising the minimum age of children to 9. The Bengal Chamber of Commerce criticized the Bill as "uncalled for, difficult, if not impracticable to carry out, injurious, specially to the welfare of the work people, etc." Simultaneously the Blackburn Chamber of Commerce of Lancashire urged fuller protection for Indian workers. The Secretary of State thereupon suggested that it might be desirable to obtain the views of the workers themselves on the question of hours and holidays. This led to the appointment of yet another Commission in September 1890 presided over by Major Alfred Lethbridge, Inspector General of Jails, Bengal.

The Lethbridge Commission, 1890: On an important point referred to the Commission, namely, whether the limitation of the hours of work for women to 11 was proper and sufficient, the Commission gave an unexpected reply. They said that if the hours of work for women were so restricted, "we are convinced that without exception these operatives will be replaced by male adult operatives or half-time children. The law supposed to be for their benefit will inflict serious permanent injury on these skilled millhands and deprive them of the chance of earning a living in these factories." The majority of the Commission were, therefore, in favour of authorizing Local Governments to exempt female operatives from the 11-hour limit, but one of the members, Bengallee, was strongly opposed to such a provision. The Commission also stated that if the upper age-limit of children was raised to 14, there should not be any further protected class called 'young persons'. Children were to be treated as half-timers, on which basis, if a factory worked between 5 a.m. and 7 p.m., the hours for children should not exceed 6¾ per day at the most. The Commission recommended that provision should be made for securing to adult male operatives the same holidays as for women and children. No provision was necessary to fix the hours constituting the working day. The half-hour recess in the middle of the day was to be statutorily provided. The Commission also made a number of other suggestions for the consideration of employers though these were not directly related to the terms of reference. They included the sounding of a single warning whistle for a whole locality at stated hours, payment of wages on the 15th day of each month, compensation for accidents, assistance towards the elementary education of children, provision of medical assistance to workers, etc.

Meanwhile a Conference called by the German Emperor in Berlin early in 1890 had recommended weekly rest days, limitation of women's hours to 11 and to daylight, provision for women of intervals amounting to an hour and a half daily, and restriction of the hours of work for children below 14 to 6 hours and to daylight. The Secretary of State pressed for the implementation of these recommendations, most of which were accepted by the Select Committee set up to consider the Bill. The Select Committee, however, made one change in the Bill, which was that factories employing less than 50 persons should not come under the Act unless they were expressly notified.

The Indian Factory Act of 1891: The Amending Act of 1891 was a great improvement on the Act of 1881 and provided for the following matters:

(*i*) The limit of the number of persons required for coverage under the Act was reduced from 100 to 50 with power to Local Governments to include all factories employing 20 persons or more;

(ii) Compulsory stoppage of work for half an hour during the middle of the day;
(iii) A weekly holiday;
(iv) Restriction of the hours of work for children between 9 and 14 years of age to 7 and to daylight;
(v) Prohibition of the employment of children in dangerous work;
(vi) Limitation of the hours of work for women to 11 and to daylight with an interval of at least one hour and a half if women were employed for the full 11 hours. Power to exempt from this provision was vested in Local Governments; and
(vii) Provision for inspection and penalties.

The 1891 Act had, however, a serious drawback in that, in spite of the large volume of evidence collected by the 1885 Commission, it excluded factories which did not work for more than four months in the year. Thus most of the seasonal factories in which conditions were very bad managed to remain outside the scope of the Act.

Condition of Industrial Labour in the 1890's: It might be opportune at this stage to pause for a while and to take stock of the results of these early attempts at amelioration of the condition of industrial labour. The following appraisal is found in A. G. Clow's book[3] on Indian Factory Legislation: "Labour at this time (1890's) was so migratory as to be almost casual. In Bombay, where at least 75 per cent of the millhands belonged to Ratnagiri, they were in the habit of returning there for months at a time and probably very few did a continuous year's work. In Bengal conditions were similar, and all other industrial centres were on too small a scale for the problems incidental to an urban industrial population to have developed. Factories were not yet sufficiently numerous to create appreciable congestion; nor were they large enough in most cases to make a more or less patriarchal supervision impracticable."

The introduction of electric light in Bombay and in Bengal between 1890 and 1900 had the result of increasing the working hours. The textile industry expanded rapidly and labour was not as plentiful as before. Factories in Bombay worked for 14 hours a day and some mills in Bengal for 15 hours. However, due to the decreased work available for jute mills, excessive hours were soon discontinued and some mills did not even work on Saturdays. In Bombay too because of the slump in 1899 the hours of work went down.

Plague in Bombay in 1896, in Calcutta in 1898, and in Kanpur in 1902 led to a great exodus from cities, resulting in labour shortage. The shortage of labour in Bombay was very serious. Labour could auction itself at street

[3] A. G. Clow: *Indian Factory Legislation*, 1926, p. 27.

(*ii*) Whether before children are allowed to work in factories, certificates of age and fitness should be required;
(*iii*) Whether the minimum age of children should be raised;
(*iv*) Whether there was need to create a class of workers known as 'young persons'; and
(*v*) Whether a separate staff of medical factory inspectors should be entertained.

The Committee recommended that as voluntary action by millowners to restrict the hours of employment of adult male workers was not possible, legislation should be undertaken to restrict the daily hours of work to 12. They did not recommend the creation of a class of 'young persons' or the raising of the minimum age of children, but they suggested that certificates of age and physical fitness should be required prior to half-time employment of children and the employment of young persons as adults. They also recommended that night work by women be prohibited in accordance with the Berne Convention of 1906. A number of other recommendations were also made regarding improvement of inspection, prevention of fire and accidents, sanitation, housing, etc.

The Factory Labour Commission, 1907: As a result of the findings of the Freer-Smith Committee, the Government of India set up a Commission presided over by W. T. Morison, I.C.S., and with members representing the six leading Provinces of India in October 1907 "to investigate, in respect of all factories in India, the questions referred to Sir Hamilton Freer-Smith's Committee, and the various suggestions and recommendations which the Committee has made."

The Commission came to the conclusion that the evasions of the Factory Act were on a scale that had scarcely been suspected before. This was so particularly in the enforcement of the restrictions relating to children. Their comments quoted below are revealing:

"In the United Provinces generally, except Agra, in the Punjab, in Southern Madras, and in the cotton mills of Bengal, children have, as a rule, been habitually worked during the whole running hours of the factories, not on the excuse that they were over 14 years of age, but in pure disregard of the law. The employment of half-timers for the whole day is undoubtedly facilitated by the practice of splitting up the children's sets into two or more working periods with a long interval between. The children must invariably remain in the mill compound during the interval and the temptation to the jobbers to utilize their services, if there is shortage of labour, is great.

Another custom which facilitates the employment of half-timers in excess

of their legal hours of work is the practice of having a school for half-timers inside the mill compound. The so-called school has been used solely for the purpose of retaining the children at the mill during the whole working day, in order that this additional supply of labour might be utilized.

The next abuse which we find to be prevalent in connection with the employment of children is the working of children under 9 years of age as half-timers and of children under 14 years as full-timers on the excuse that they are over 14.

The employment of children on full-time and the working of the under-age children are the most serious abuses regarding child labour which we have discovered. The provisions of the law are also disregarded in other respects. Some mills allow the children no mid-day interval. The children, where they are employed on half-time only, are frequently required to work for seven hours continuously without any interval of rest; and one manager who adopted this system went so far as to claim that it was sufficient compliance with the law if half an hour's interval were given to half-timers before they began work or after they finished it."

Observing that in 17 out of 29 cotton factories visited by the Commission, all the children under 14 years of age were regularly worked the same hours as adults, the Commission said that factory inspectors had admitted that they had known of all these abuses but that they had taken no steps to stop them. The Commission came to the conclusion that except at a few centres, the system of factory inspection had proved a failure. "Our deliberate opinion is that the inspection of large factories by the District Magistrate or the Civil Surgeon is, so far as the enforcement of the Act is concerned, a useless formality which ought to be abandoned."

Regarding hours of work, the Commission held that these were not excessive except in textile factories. In regard to textile factories they gave several instances where workers were required to work 13, 14 or even 15 hours. The Commission held that a 15-hour day meant in fact absence from home for 16 or 17 hours and that "no further argument is necessary to prove that such a condition of affairs must inevitably lead to the deterioration of the workers." And yet the Commission did not favour a direct limitation of the hours of work of adult males.

The reasons given by them were:

(i) that "we do not consider that any case has been made out in favour of applying a principle which is admittedly of somewhat doubtful validity, which commands acceptance in very few countries, which is open to the gravest objections from a practical point of view and

which supplies a remedy very much more drastic than the circumstances of the case demand";

(ii) that direct limitation involved a restriction of the working hours in all factories whereas such restriction was only necessary in textile factories;

(iii) that such restriction would be repugnant to the great majority of capitalists, both in India and abroad; and

(iv) that "if legislation is now undertaken to limit the working hours of adult males to 12 or 13 hours, it will not stop them, and attempts will be made in the future—not always suggested merely by the idea of doing justice to the operatives—to restrict still further their working hours."

The Commission, therefore, sought to achieve their objective of reduction of long hours for adult males by suggesting reduction of the hours of work of young persons between 14 and 17 to 12 hours and to daylight, reduction of the working hours of children from 7 to 6, and maintenance of a compulsory interval for all workers after 6 hours' continuous work. These restrictions, they argued, would make it difficult for any manager to work his adult employees more than 12 hours a day.

One of the members of the Commission, Dr. T. M. Nair, who, in fact, declined to sign the report wrote a long dissenting note in the course of which he mentioned as follows:

"We have seen that operatives in ginning factories have had on occasions to work 17 and 18 hours a day. In rice mills and flour mills men have occasionally to work 20 or 22 hours. In printing presses men have had to work for 22 hours a day for seven consecutive days. I admit that these are only occasional occurrences, but for habitually long hours one must go to the textile industries.

The tendency to work long hours in the cotton mills in Bombay began, I understand, in the year 1898. The Collector of Bombay, in his letter dated 24 June 1905, pointed out that out of 74 mills, the exact working hours of which he had ascertained, 16 mills worked 14 hours or more a day and 33 worked 13 hours or more. That was in the first half of the year 1905. But by June 1905, the Collector wrote that the figures mentioned above were exceeded. The system of daylight working, which is very much favoured in Ahmedabad, has resulted in very long hours being worked in the hottest and most trying part of the year.

Before this Commission 16 millowners and 42 mill managers appeared and gave evidence in favour of a legislative restriction of the working hours of adult males against 103 who were opposed to it while the mill operatives were practically unanimous in asking for legislative protection."

Dr. Nair concluded by saying that "nothing but legislative restriction of the hours of adult labour within reasonable limits will effectively prevent these long hours being worked."

The Commission recommended reduction of the hours of work for children to 6 hours and enforcement of a certificate of age and physical fitness prior to the engagement of children. They also suggested reduction of the upper age limit to 13 for being permitted to work 12 hours a day if the employee had certain educational certificates. The Commission recommended increase in the number of hours of work for women from 11 to 12. This they justified by their anxiety to encourage the employment of women and on the basis of their observation that the general physical condition of the female operatives was uniformly excellent. "The measure", the Commission observed, "will be popular with the operatives themselves and will enable them to recover the position which they held prior to the introduction of the present limitations on their hours of work." Though ginning factories were to be included within the operation of the Act, the provision, which was recommended, permitting night work by women and for giving relaxation from the daily hours of work more or less nullified the effect of the inclusion. A new class of 'young persons' between the ages of 14 and 17 years was to be formed and their working hours were to be limited to 12 a day.

The Factory Bill, 1909: A new Factory Bill was introduced in the Governor General's Council in July 1909. On some of the controversial points, it adopted the proposals of Dr. Nair in preference to those of the majority of the Commission. The hours of work for adults were to be directly limited to 12 daily, but that provision was to apply only to textile factories. Women's hours were to be maintained at 11 instead of being raised to 12. No class of young persons was to be created. Limitation of children's hours to 6 was also confined to textile factories. Complete cessation of work for half an hour in the middle of the day was provided for. There was also a number of new provisions relating to health and safety.

Although the opposition to the Bill was not quite so strong as might have been the case a few years earlier, one employers' association wrote that "even at the eleventh hour it is earnestly hoped that the revolutionary, dangerous, and, as my Committee thinks, unnecessary legislation contemplated should not be persisted in."

At the Select Committee stage, the numerous and vague exemption clauses were replaced by definite criteria and schedules, according to which alone exemption could be granted by Local Governments. In the Bill, Government had reserved the right to extend to all factories the restrictions imposed on textile factories. That clause was deleted by the Select Committee. The Factory Act of 1911 provided the nucleus around which all subsequent Factories Acts have been built.

Working Conditions in Early Days: From the narrative given above it is obvious that working conditions in Indian factories were very bad — occasionally even cruel—as might be gathered from the frank deposition of Rastamji Framji Wadia. But it should not be inferred from this that Indian employers were particularly hard-hearted or exploiting as compared to employers in other parts of the world. Democracy and social justice had quite different meanings and values the world over in earlier days. There might have been a time lag in the thinking of men in different countries, and while one country might have moved away from practices which appeared increasingly jarring or revolting to human conscience, another country might have taken its own time to do so. Conditions were, or had been, nearly as bad in western countries which had stolen a march over the East in the matter of industrialization. The plight of the poor in Dickens's England was no better. The picture of Charles Dickens, aged 10, working in Warren's Blacking at six shillings for a 72-hour week or of David Copperfield working as "a little labouring hind" in the warehouse of Murdstone and Grinby for the same wage in the first quarter of the 19th century is no more pleasant than that of children in Indian factories at the time of the First Factory Commission in the last quarter of the same century. Trevelyan gives in his *History of England* the following vivid description of the conditions obtaining in England in mid-19th century: "The evils of this first period of the new economic system were great, but they were a concentration and multiplication of old evils rather than a creation of new .... In Scotland the miners, incredible as it may appear, were bound serfs until nearly the close of the 18th century. And even in England women and children in the past had been literally harnessed to the work under unspeakable conditions in the damp darkness of the mine. The Industrial Revolution immensely increased the mining population without at first materially improving their conditions, and their ill-treatment was revealed to a more humane and inquisitive generation by the epoch-making Mines Report of 1842. So too, pauper children, who had previously been handed over individually to the domestic affections of Mrs. Brownrigg and Peter Grimes (the allusion being to the doing to death of apprentices by Mrs. Brownrigg and others), might in the new age be grouped together in a cotton mill run by a hard-bitten North country working man who had borrowed a couple of hundred pounds to start the business, and had no compunctions about making the lasses work." [4]

Conditions during Marx's Time: For a truly harrowing account of the working conditions of labour in Europe in the first half of the 19th century, one must go to Karl Marx's *Capital*. There, with a wealth of illustration and an unsurpassed exuberance of scathing eloquence, Marx has spread out over

[4] G. M. Trevelyan: *History of England*, 1929, p. 607.

seventy pages of the chapter entitled 'The Working Day' examples by the dozen of the deadly exploitation of the helpless worker by the capitalist who has learnt to view him as nothing more than a replenishable store of surplus labour. Surplus labour, by which Marx means that portion of labour rendered by the worker for which he gets no return, has been exacted throughout history, whether the owners of the means of production were the Athenian proprietor, the Etruscan theocrat, civis Romanus, Norman baron, American slave-owner, Wallachian Boyard, or the modern landlord or capitalist. He describes the exaction of corvée labour by the Wallachian Boyard to show how the 'necessary' labour which the peasant did for his own benefit—and which corresponds to paid labour—was distinctly marked off from his surplus labour—for which there was no return—on the seignorial estate of the Boyard. The unpaid labour, Marx has calculated at two-thirds of the 'necessary' labour.

After establishing that wage-workers have always been forced to render surplus labour, Marx enters on the lurid details of the method of exaction of surplus labour, and for this purpose he draws freely on his encyclopaedic knowledge of conditions in English industry. For want of space, we must be content with a few verbatim quotations from *Capital* bearing directly on our subject.

Marx quotes Mr. Broughton Charlton, County Magistrate, Nottingham, on the plight of the lace worker in 1860: "Children of nine or ten years are dragged from their squalid beds at two, three, or four o'clock in the morning and compelled to work for a bare subsistence until ten, eleven, or twelve at night, their limbs wearing away, their frames dwindling, their faces whitening, and their humanity absolutely sinking into a stone-like torpor, utterly horrible to contemplate....The system, as the Rev. Montagu Valpy describes it, is one of unmitigated slavery, socially, physically, morally, and spiritually.... What can be thought of a town which holds a public meeting to petition that the period of labour for men shall be diminished to eighteen hours a day?"

He then refers to various official reports on the condition of workers in the potteries of Staffordshire: "William Wood, 9 years old, was 7 years and 10 months when he began to work. He 'ran moulds' (carried ready-moulded articles into the drying room, afterwards bringing back the empty mould) from the beginning. He came to work every day in the week at 6 a.m. and left off about 9 p.m. 'I work till 9 o'clock at night six days in the week. I have done so seven or eight weeks.' Fifteen hours of labour for a child 7 years old!"

The manufacture of lucifer matches supplies Marx with many appropriate examples: "Of the witnesses that Commissioner White examined (1863), 270 were under 18, 50 under 10, 10 only 8, and 5 only 6 years old. A range of the working day from 12 to 14 or 15 hours, night-labour, irregular meal-

times, meals for the most part taken in the very workrooms that are pestilent with phosphorus. Dante would have found the worst horrors of his Inferno surpassed in this manufacture."

Bakeries provide his next example: "During what is called 'the London season', the operatives belonging to the 'full-priced' bakers at the West End of the town, generally begin work at 11 p.m., and are engaged in making the bread, with one or two short intervals of rest, up to 8 o'clock the next morning. They are then engaged all day long, up to 4, 5, 6 and as late as 7 o'clock in the evening carrying out bread, or sometimes in the afternoon in the bakehouse again, assisting in the biscuit-baking. They may have, after they have done their work, sometimes 5 or 6, sometimes 4 or only 5 hours' sleep before they begin again."

A tremendous railway accident is the cause of an enquiry before a London Coroner's jury: "The negligence of the employees is the cause of the misfortune. They declare with one voice before the jury that ten or twelve years before, their labour only lasted 8 hours a day. During the last five or six years it had been screwed up to 14, 18, and 20 hours, and under a specially severe pressure of holiday-makers, at times of excursion trains, it often lasted for 40 or 50 hours without a break. They were ordinary men, not Cyclops. At a certain point their labour-power failed. Torpor seized them. Their brain ceased to think, their eyes to see."

Long hours in the millinery trade killed an employee. A doctor called too late to the death bed bore witness before the Coroner's jury that "Mary Anne Walkley had died from long hours of work in an over-crowded workroom, and a too small and badly-ventilated bedroom." Marx comments that "this girl worked, on an average, 16½ hours, during the season often 30 hours, without a break, whilst her failing labour-power was revived by occasional supplies of sherry, port, or coffee."

There is no need to multiply such instances; nor are we here concerned with the events leading to the enactment of the English Factory Acts of 1833, 1844, 1847, and 1850, which have been fully described in Marx's *Capital*. It is, however, interesting to note that when the Home Secretary, Sir George Grey, in charge of the administration of the Factory Acts, recommended the Factory Inspectors not "to lay informations against millowners for a breach of the letter of the Act or for employment of young persons by relays in cases in which there is no reason to believe that such young persons have been actually employed for a longer period than that sanctioned by law," the English Factory Inspectors "declared that the Home Secretary had no power dictatorially to suspend the law, and continued their legal proceedings against the pro-slavery rebellion." That was in the year 1848.

Marx, who wrote this chapter in 1867, sums up his conclusions in the following terms: "The capitalistic mode of production (essentially the pro-

duction of surplus-value, the absorption of surplus-labour), produces thus, with the extension of the working day, not only the deterioration of human labour-power by robbing it of its normal, moral and physical, conditions of development and function. It produces also the premature exhaustion and death of this labour-power itself. It extends the labourer's time of production during a given period by shortening his actual life-time."

The conditions in America at about the time of the Civil War (1861) were no better. When slave labour was systematically flogged and driven until they dropped down exhausted, the free labour could not hope to have an easy time. Even in the better industries the fight for the 8-hour day was a prolonged one and was carried into the first May Day of 1886 which, a couple of days later, saw much violence and led to the hanging of four labour leaders. Conditions in America's mines in the West were even worse right up to the end of the last century. In many places miners worked for 12 hours a day and 7 days in a week. As late as 1915 the Government Commission on Industrial Relations reported that labour's plight was pitiable. The Commission said: "Freedom does not exist either politically, industrially or socially for workers on strike or trying to organize." It found that the use of thugs, spies and hired gunmen was general throughout the country in the employers' efforts to keep the open shop.

It is difficult for us to look at history objectively, for our sense of social values is wholly different from that of a forgotten era. Today Bombay's least skilled worker earning some Rs. 8 to 10 ($ 2) per day for an 8-hour day cannot possibly contemplate with any measure of equanimity the plight of the ginning factory woman worker of the 1880's earning 3 to 4 annas (5 cents) for a 16-hour day any more than the American worker of today doing a 36 or 40-hour week on what is perhaps the highest wage rate of the world can think of the mine worker of the 1880's working an 84-hour week on a mere pittance and under the direct surveillance of State Deputy Marshals and private Pinkertons. While we are today appalled by conditions that obtained a mere half century ago—whether it be in India or in the West—it is as well to remember that ideas on social justice vary from era to era and that man is the victim of his own thinking and progress.

Concern of Workers of the Early Period: From the description given above of the conditions of work obtaining in the major industries of the country during the period 1875-1911, it is clear that the industrial workers of that early period were concerned far more with their working conditions than with their emoluments and perquisites. During this period, there were no trade unions in the strict sense of that term. N. M. Lokhande, who is sometimes referred to as "the founder of the organized labour movement in

India,"[5] did not appear before the Factory Commission of 1875. Out of the 8 members of that Commission, the only two who recommended at least a simple legislation for the protection of workers were both Englishmen. By the time the Second Commission met in 1884, Indian sympathizers had arrived on the scene. A person who played a notable part in advocating the cause of labour and in supporting progressive factory legislation in the early days was Sorabji Shapurji Bengallee, who was a member of both the 1884 and 1890 Commissions. He was not a trade union leader or even a representative of workers; he was only an active sympathizer drawn from the higher strata of society. N. M. Lokhande, who described himself as the Chairman of the Millhands' Association, appeared as a prominent witness before the 1884 Commission advocating the cause of labour, but from the pains he took to point out to the Commission that he was not there to represent the men who had taken part in the recent agitational meetings and that he was giving evidence as an independent witness, it is clear that he did not lay much store by his status as the Chairman of the Millhands' Association. On the other hand, he probably felt that he would draw less suspicion and antagonism, and command greater attention, from the Commission if he disowned all association with, and active participation in, the agitation. In the heyday of the Victorian Era mere agitators, who worked against the established order of society, were at a great discount the world over, though philanthropists and social reformers were treated with respect. It is interesting to note that the Commission described Lokhande in the proceedings as "the Chairman of the meetings of the operatives" or as "the Chairman of the operative mass meetings"—as if to keep constantly before the public the Commission's suspicion that this witness did not altogether answer to a clean bill of health. Nobody took the slightest notice of the Millhands' Association and no questions were put to Lokhande regarding its status or activities. About the only activity of the Millhands' Association was the holding of two mass meetings at Parel and Byculla on 23 and 26 September 1884 and the passing of a resolution demanding a complete day of rest on every Sunday, half an hour's recess at noon, the working of mills between 6-30 a.m. and sunset, payment of wages not later than the 15th of the month following that during which the wages were earned, and compensation for injuries suffered during work. Lokhande dutifully forwarded the resolution to the Commission.

On 24 October 1889, the millhands of Bombay, under the leadership of Lokhande, submitted a petition to the Viceroy and Governor General of India recalling their representations of September 1884 and praying that they be attended to. By the time the Lethbridge Commission of 1890 was set up, Lokhande must have established himself somewhat securely as the President of the Bombay Millhands' Association. He was in consequence appointed as

[5] V. V. Giri: *Labour Problems in Indian Industry*, 1958, p. 2.

a local member of the Commission to assist the Commission in so far as the problems of the Bombay Presidency were concerned. There is no information whether the Bombay Millhands' Association undertook any work apart from holding occasional meetings with a view to making representations to Government or whether it organized its supporters into a fee-paying workers' organization.

Lokhande's demands both in 1884 and in 1890 were marked by a restraint and moderation which are quite unusual these days. Today labour's outlook is that of the vendor in the market place. The demands made are highly exaggerated, even as the market vendor quotes three times the usual price in the expectation that he will not be beaten down to less than a third of his quotation. Obviously Lokhande did not wish to stir up the wrath of the powerful employers by his advocacy of extreme measures. When he told the Commission in 1884 that he would legislate for the benefit of adult men, he had largely in mind only the securing of a weekly holiday for them. He was really not thinking in terms of restricting the hours of work for men. Most of his evidence was confined to the protection of women and children. He defined children as those between 8 and 12 years of age, while the Commission itself proved willing to raise the age limits to 9 and 14. In fact the Medical Committee appointed by Government had suggested the fixation of the lower limit at 10. Even with the greater standing and confidence that he must have attained by 1890, Lokhande's main demand before the 1890 Commission was limited to a weekly day of rest for all industrial workers without exception. When the Commission recommended that they would not suggest restriction of the hours of work for women to 11 or that they would not suggest the creation of a new class of young persons, there was no protest from Lokhande.

It is far from our intention to disparage the pioneering efforts made by Lokhande. On the other hand, he should be congratulated on the great restraint he showed in limiting himself to the barest essentials. Extravagant claims stood no chance of acceptance and might even have come in the way of the partial amelioration of the hardships of workers. The cautious manner in which Lokhande discharged his responsibility towards the millhands of Bombay is a model for those trying to build up a movement from weak foundations. It is interesting to note that Lokhande was not an "outsider" but a worker himself. He had been employed in three mills over a period of nine years as millhand, store supervisor, and assistant to the Manager. Circumstances were, by no means, propitious for the advocacy of the cause of the weak and the suffering. Writing in the *Dinbandhu* of 4 December 1881 on the subject of the opening of a fair price shop for the benefit of labour with a view to saving them from "cunning Marwaris and grain dealers," he said: "We have a great apprehension as to whether the

state of our people would ever be bettered. Our journals and some malicious persons by means of some trashy comment try to throw cold water on any undertaking having for its object the good of the people. It is for this reason that nobody comes forward to undertake any good work."

These were the early indications that the evils of industrialization would soon force labour to seek redress by using the strength arising from combination. The early measures of amelioration of the hardships of labour were not due to the initiative of the workers themselves. The conscience of the public had been stirred and public-spirited persons, both British and Indian, had taken up the cause of labour. The scathing criticisms of Lovat Fraser must have greatly embarrassed the British rulers at a time when the British Empire was on top of the world. It is true that the interest taken by the millowners of Lancashire and Dundee was the result of business competition, but that cannot be said of the considerable amount of interest taken by several members of the British Parliament and certain Secretaries of State for India. The ground for trade unionism had been prepared by the sympathetic attitude of a number of large-hearted men unconnected with the labour movement.

During the period Lokhande, with a measure of encouragement from official quarters, kept up a sustained propaganda on behalf of labour, there was no trade union movement as such. The Report on the working of the Factory Act in the town and island of Bombay for the year 1892 recorded: "The Bombay millhands have no organized trade union. It should be explained that although Mr. N. M. Lokhande, who served on the last Factory Commission, describes himself as President of the Bombay Millhands' Association, that Association has no existence as an organized body, having no roll of membership, no funds, and no rules. Mr. Lokhande simply acts as volunteer adviser to any millhand who may come to him."

Associations and Unions before the First World War: The setting up of no less than three Commissions between 1875 and 1890 and the enactment of two factory laws between 1881 and 1891 gave a great deal of encouragement for the formation of labour combinations—variously called associations, societies, unions, sabhas, etc. Among these were the Amalgamated Society of Railway Servants of India and Burma (1897), the Printers' Union, Calcutta (1905), the Bombay Postal Union (1907), the Kamgar Hitvardhak Sabha (1910), and the Social League (1910). Some of these were well-organized bodies. The Amalgamated Society of Railway Servants, for instance, had detailed rules and provided for the election of its office-bearers, the holding of the annual general meeting, the administration of branches, the prescribing of the powers of the different office-bearers, etc. There was provision for collection of subscriptions and grant of various small benefits to members.

Strikes before Organization: Though in the years prior to the First World War there was no organized trade union movement, industrial workers had already discovered the weapon of strike and used it sometimes to good effect. One or two strikes occurred in the Bombay mills in 1894, but they were not important. A big strike of mill workers took place in Ahmedabad in February 1895. The Ahmedabad Millowners' Association had changed the system of weekly payment to one of fortnightly payment. This led to a strike by some 8,000 weavers, but it was unsuccessful. The epidemic of plague in Bombay in 1897 took a heavy toll of life and caused a serious shortage of labour. Workers were greatly in demand. They took that opportunity for demanding daily payment instead of monthly payment. Surprisingly enough, on account of the shortage of labour, they succeeded in securing the demand, but when the plague abated, the Millowners' Association decided to discontinue the system of daily payment. This action of employers led to several strikes, which were mostly successful for the time being. Later on, fresh troubles arose over the same issue and the employers decided to engage labour on contract, the contractor being paid at the end of the month. In 1903, there was a strike in the Madras Government Press as a protest against the working of overtime without additional payment. It went on for over six months. The Government, as employer, used convict labour and broke up the strike.

In 1905, there was a strike in the Government of India Press at Calcutta. The points at issue were non-payment for Sundays and gazetted holidays, irregular imposition of fines, low rate of overtime and refusal to grant leave on medical certificate. Several of the strike leaders were dismissed and the strike collapsed after Government agreed to some of the demands.

It was about this period, when the number of mills rapidly increased particularly at Ahmedabad and the supply of labour fell short of the demand, that workers realized the possibility of securing wage increases through concerted action. Till then agitation as well as strikes had been aimed at securing improvement of working conditions. In 1907, the workers of the Samastipur Railway Workshop asked for an increase in wages and, when it was refused, struck work. Within a week they secured a famine allowance and returned to work. In Bombay also a number of strikes took place on the question of increased wages.

In 1910 the workers of the Narmada Mills at Broach struck work as a protest against long working hours, night work and personal grievances. Government offered their good offices and the dispute was settled. In that year an important association called the Kamgar Hitvardhak Sabha was formed in Bombay. The Sabha asked for reduction of the working hours to 12 per day, workmen's compensation and facilities for education.

Politics even before Trade Unionism: The period prior to the First World War witnessed also the first intrusion of politics into trade unionism at a time

when the trade union movement itself had not taken proper shape or root. The Swadeshi Movement which gathered momentum in Bengal in 1905 used industrial workers and prodded them on to activity, chiefly with a view to creating troubles for big employers including Government. Political leaders in Bengal organized an Association of Printing Workers. Postal workers not only in Bengal but in Bombay and Madras formed postal unions and called them postal clubs. When Lokamanya Tilak was sentenced to six years' rigorous imprisonment in 1908, the workers of Bombay went on a six-day political mass strike. The politicians of the day had discovered a very useful tool for their purpose even before workers had learnt to organize themselves properly. This early misuse of the strength of workers in combination for purposes other than the economic interests of workers has since continued right up to recent times in various forms and to various degrees.

CHAPTER II

TRADE UNION MOVEMENT BEFORE INDEPENDENCE

Influences of the First World War: The First World War gave a great impetus to the industrialization of the country, but it also brought with it the problems of industrialization. The serious shortage of shipping during the war resulted in a substantial reduction in imports. The large demand of the allies for industrial products boosted up indigenous production, but it also raised the prices of all commodities—agricultural and non-agricultural. Internal markets suffered from shortages and high prices. As a result of the diversion of traffic facilities to priority military movements, the internal distribution of goods dropped to the barest minimum consistent with the maintenance of the economic life of the nation. Local scarcities developed even when there was no overall shortage in the country. The prices of essential commodities like salt, kerosene oil, and cloth rose very high and caused much distress to the poorer sections of the community. The effects of a war are most felt towards the end of it, and so it was that economic conditions became acute only in 1917 or so. Agrarian unrest and industrial strikes became widespread.

The War made its impress on the working classes in another unexpected way. Large numbers of them, who would otherwise have been content to work in factories and allied employments and to accept existing conditions without any serious protest, were recruited into the army and sent abroad for active service. The prosperous condition of the working classes in the industrialized West came as an eye-opener to Indian workers, temporarily transformed soldiers, who had toiled long hours in factories under insufferable conditions on a mere pittance. So after all, they felt, labour too had its rights and expectations. A fair wage and reasonable conditions of work were a basic right and not an extravagant demand. Even a labourer was a human being entitled to work for, and expect, a moderate competence and even some comforts. Given the same opportunities and facilities, the easterner was the equal of the westerner in the matter of ability, intelligence and capacity, and the exaggerated values attached to the service of the white man in India were but a part of the myth of the white man's burden. The returning soldier came back convinced that he had had a raw deal at the hands of the industrialist in the past.

Other Influences: There were also other influences at work. Internally, agitation on the political front had its expected, and perhaps intended, reper-

cussions on the large and growing working classes, which, more than any other section of the population, had developed the strength and the desire to form the spearhead of agitational reforms. The Home Rule movement, which advocated the principle of self-determination, made workers sit up and consider whether they were to have no hand in the settlement of their own future and whether they were going to allow the ever-fattening employers to have it all their own way. The turn that political events took after the arrival on the scene of Mahatma Gandhi was even more decisive. The self-respect of the nation had been roused, and many sections of the population in the forefront of the national movement started clamouring for something or other. Trade unions were not to be left out of the picture, especially as they could hand over their grievances to the politician to enable him to forge his agitational weapons. The civil disobedience movement and the Jallianwala Bagh massacre turned public wrath against the foreign ruler and against all those vested interests that supported him and were in turn supported by him.

The great encouragement given to labour problems and to the evolution of a trade union movement based on principles rather than opportunism by the great leaders of the national independence movement cannot be overstated. Lokamanya Tilak, Annie Besant, and Mahatma Gandhi were the stalwarts who bore the main brunt of this responsibility.

Gandhiji's work for labour in India started almost soon after his return to India from South Africa. In 1917 he organized public meetings and persuaded the Government of India to put a stop to indentured emigration from India—thus terminating the vicious 'Semi-Slavery' system by which Indian labour had taken upon itself the thankless task of developing the white man's colonies. Then he moved on to Champaran to guide the agitation against the tyranny of the white Indigo planters. Hardly had he succeeded in persuading the Government to make adequate enquiries into the grievances of the ryots and to take necessary action, when an urgent summons was received from Shrimati Anasuyabehen, the capitalist turned labour leader, asking him to go to Ahmedabad in support of labour's struggle with the millowners. This, as we shall see presently, led eventually to the building up of the most successful labour organization in the whole of India, which continues to be so even to this day.

At about the same period two international events had a profound effect on Indian labour. The first was the Russian Revolution of 1917 which held out hopes for all oppressed peoples of a dream world of government for workers by workers. If workers were so powerful as to declare themselves rulers of a vast and ancient empire, surely they were at least competent enough elsewhere to secure for themselves a fair wage. Immediately after the Russian Revolution, communism gained considerable ground in many countries including India. The early twenties witnessed the steady build-up of communism in the country, leading, in due course, to overt activities and

culminating in the Meerut conspiracy case. The infiltration of communism into the trade union movement resulted in a serious split in the All-India Trade Union Congress.

The other international occurrence, which affected the fortunes of Indian labour even more vitally than the Russian Revolution and which, in fact, held out great hopes for the infant labour movement, was the establishment, in the wake of the peace treaty, of the International Labour Organization. It was fortunate too that India, even though for purely prestige reasons, asked for and obtained a permanent seat on the Governing Body of the Organization on the basis of her claim to being a major industrial nation. Because of her general obligation to the International Labour Organization and also because of her self-imposed burdens as a founder-member of the Organization and consequently as a pace-setter for the rest of the world, India could not but ratify at least a certain number of the conventions and recommendations evolved by the International Labour Organization and implement them in the best possible manner.

These developments, internally and internationally, led to the establishment and development of the trade union movement in India. Labour's diffident demands in the past for humane working conditions gave place to their insistence on their rights; no longer would they be content with charity and philanthropy.

The Madras Labour Union 1918: The Madras Labour Union was one of the first well-organized trade unions in the country developed according to modern concepts. The circumstances in which it came into existence and the hardships which it had to undergo to get itself firmly established are, therefore, interesting. In its representation to the Royal Commission on Labour in India, the Madras Labour Union laid claim to being "the oldest organized trade union in India." B. Shiva Rao records[1] how one morning in April 1918 two young men, G. Ramanujulu Naidu and G. Chelvapathi Chetti, members of a religious organization called the Sri Venkatesa Gunamrita Varshini Sabha, who had for some time past been engaged in social and religious work among the textile workers of Madras, called on B. P. Wadia, Assistant Editor of Dr Annie Besant's newspaper *New India*, to seek his assistance for bettering the lot of textile labour. Wadia was essentially a politician advocating home rule and had already been interned in the previous year in connection with his activities. Wadia visited the Buckingham and Carnatic Mills and heard the grievances of the workers, which were (*i*) the extremely short recess for the midday meal of 30 minutes (which was extended to 40 minutes immediately after the suggestion of a trade union), (*ii*) the frequency of assaults on the workers by the European

[1] B. Shiva Rao: *Industrial Worker in India*, p. 13.

assistants in the mill, and (*iii*) the inadequate wages in face of rapidly rising prices. At that time the Factories Act of 1911 permitted a 12 hours' day with half an hour's interval for meals and rest. After addressing a number of meetings at which he emphasized the dignity of labour and the necessity of cultivating a sense of self-respect and self-reliance, Wadia formally inaugurated the Madras Labour Union on 27 April 1918. A monthly subscription of one anna was prescribed. Though the majority of the members belonged to the textile industry, the Union enrolled other workers also, such as tramway men, rickshaw pullers, etc.

Wadia made no effort to conceal his view that the labour movement was conceived of only as a part of the political movement and hence as a means to the achievement of political freedom and democracy. He wrote:

> "It is very necessary to recognize the labour movement as an integral part of the national movement. The latter will not succeed in the right direction of democracy if the Indian working classes are not enabled to organize their forces and come into their own. Unless this is done for all classes of labourers—peasants, plantation workers, factory hands, and miners—even the Montagu reforms will only succeed in transferring the power of the bureaucracy from foreign to native hands; that is not democracy."

To continue the story of the Madras Labour Union, the Governor of Madras sent for Wadia on 18 May 1918 and "expressed disapproval of his line of work." Wadia replied that he could not discontinue his activities. He then made a number of suggestions to the management of the Buckingham and Carnatic Mills, namely, (*i*) extension of the midday recess of 40 minutes to one hour, (*ii*) increase in the wages by 25 per cent as in Ahmedabad, (*iii*) better treatment of the labourers by the European officers and removal of racial feelings, (*iv*) regulations for the dismissal of workers, (*v*) payment of wages on the 7th of each month instead of the 22nd, and (*vi*) payment of wages when the machinery got out of order. One of the important complaints of labour at this time was ill-treatment and beatings by European officers. The union started prosecuting the offenders and got convictions in some cases. The punishments imposed were not heavy; a European assistant convicted of branding a worker with a red-hot iron bar was fined only Rs. 35. But even so, the psychological effect of securing a conviction against a European officer was considerable. The rule of the rod immediately became discredited.

Though the management failed to respond to the demands, Wadia discountenanced all suggestions of a strike. He said:

> "If by going on strike you were affecting the pockets of Messrs. Binny and Co., I would not mind, for they are making plenty of money; but by such a step you will injure the cause of the Allies; our soldiers, who have to be

clothed, will be put to inconvenience, and we have no right to trouble those who are fighting our King's battles, because a few Europeans connected with these mills and this Government are acting in a bad manner. Therefore we must have no strikes."

However, this admirable code of patience and self-restraint seems to have been observed only by the Union. In October 1918 the management of the Buckingham and Carnatic Mills ordered a lock-out, the first of its kind, on the ground that the workers had failed to obey the rule of being present at the mills at 6 a.m. Wadia was all consideration for observance of the rule of law. He told the workers:

"... if you want to be true to your principles and ideals of the labour union, be present there tomorrow morning at 6 o'clock. If tomorrow Sir Clement Simpson or his assistants give you an order that you shall be present at 5.30 in the morning, please see that the day after tomorrow you go at 5.30 a.m."

Present-day employers harassed by noisy demonstrations and vengeful threats and often subjected to no small measure of violence must feel dumbfounded at such moderation and reliance on "principles and ideals" on the part of a labour leader. To them, alas, the halcyon days of respectful and responsible behaviour on the part of workers are a mere memory of the past.

Notwithstanding such an open avowal of restraint and moderation by the union, the management ordered a second lock-out on 27 November 1918 on the ground that the manager and the accountant of the first mill and the weaving master of the second mill had been assaulted by the workers. Unions the world over seem to discover intuitively in the early stages of their career that the law of the jungle is more readily available, and hence more potent, than all the laws of the State. Wadia lost no time in condemning the assault. An article in *New India*, of which Wadia was Assistant Editor, said:

"The bulk of the workmen are disgusted with such acts (of violence) and several of them are actively trying to trace the culprits.... At almost every meeting Mr. Wadia has been strongly impressing upon them that under no circumstances should force be used, or the least sign of indiscipline shown, and every effort is now being made by him to find out whether any member of the union was even remotely connected with the assault."

The Union passed a resolution condemning the assaults and appealing to all members to help the police to trace the culprits. At the same time the resolution condemned the action of the authorities in ordering a lock-out of both the mills and thereby "causing intense suffering to the labourers in these hard times of economic distress."

Then ensued a controversy between the management of the mills and Wadia regarding the character of the Madras Labour Union. The management wrote in the *Madras Mail* of 10 December 1918:

> "Messrs. Binny and Co. quite appreciate the fact that labour unions have come to stay and would cordially meet more than half-way a properly constituted union of their workpeople, but a union, such as the present one, with representatives who know absolutely nothing of labour conditions in Madras or over the rest of India, and whose primary object is politics, can serve no useful purpose as regards either employees or employers, and, as has been proved already, is causing untold mischief, misunderstanding, and needless suffering."

Thus was fired the first management salvo squarely against "outsiders" and politicians. Wadia retorted violently:

> "Why should Messrs. Binny and Co. object to a politician taking up this question? Are not labour leaders politicians in Great Britain? Imagine Mr. Lloyd George telling Mr. Henderson 'I will cordially meet a properly constituted union not headed by politicians'. It is for the labourers to say who should be their leaders and what shall be the constitution of their union; it is not for Messrs. Binny and Co. to dictate."

C. F. Andrews, deputed by Mahatma Gandhi, intervened on behalf of the workers. The mills reopened on 17 December 1918, the conditions of the settlement being that the management would pay seven days' wages for the lock-out period as an act of grace and not as a legal right, but that they would refuse to refer to arbitration the points of dispute and to reinstate the dismissed men.

In 1919 the Union grew in strength and importance. There were no strikes or lock-outs. After the Union celebrated its anniversary on 13 April 1919, Wadia left India to attend the International Labour Conference in the United States.

In February 1920 the Union drew up a list of the workers' grievances and sent it to Messrs. Binny and Co., Managing Agents of the Buckingham and Carnatic Mills. Meanwhile employers in Madras had started viewing with disfavour the influence of "outsiders" in labour unions. The management, therefore, asked the Union whether the executive committee was composed exclusively of the employees of the Buckingham and Carnatic Mills or not. This the Union resented. Soon trouble broke out. The management held out certain offers, such as increase in wages to workers, a promise of building houses for mill employees, the grant of gazetted holidays and 6 to 15 days' privilege leave and increase in the quantum of bonus from 5 to 10 per cent. But simultaneously the management condemned the influence of outsiders in the

Union and asked for the cooperation of the men. Better work was to be turned out and no further wage increases were to be given for two years. The workers threatened to strike, but this was averted by the Labour Commissioner's intervention and the setting up of a court of enquiry. Over the interpretation of the court's "award", there was disagreement and the workers went on their first strike. The strike was called off on the assurance of the Governor that the workers' demand would be viewed sympathetically.

In October 1920 there was again trouble in the Buckingham Mill over the passing over of the claims of a side jobber for promotion. The workers attributed this to his actively working for the cause of the Union. The head jobber, when ordered by the manager to look after the duties of the vacant jobber's place, refused to do so, and the weavers refused to work there. The management instituted a campaign of dismissals and about 50 men were dismissed in a few days. The weaving master was confined to his room and his revolver was snatched away by the workers. Immediately after this incident the management declared a lock-out "in view of the assault on the weaving master and the general turbulent attitude of the work people." The Union held meetings every day and appointed a "lock-out committee" with Wadia as President to take measures to defeat the employers. About a month after the lock-out Messrs. Binny and Co. filed a suit against Wadia and the other members of the lock-out committee "for interfering with the work people and dissuading them from working and thereby causing serious loss to the Company" and claimed damages to the extent of Rs. 75,000. They also applied for an interim injunction against the defendants, which was granted until the disposal of the civil suit. The judgment of the High Court was in favour of Messrs. Binny & Co. On 2 December 1920 an order was issued against Wadia and the lock-out Committee prohibiting them from holding meetings of the workmen of the mills. The workers of the other mill, the Carnatic Mill, went on a sympathetic strike on 24 January 1921. At this juncture Purushottamdas Thakurdas of Bombay and Mrs. Besant opened negotiations on behalf of the workers. As a result, a settlement was arrived at whereby the management promised to take back all the dismissed men except 13 ringleaders and also to withdraw the civil suit if Wadia and other outsiders would leave the Union for the work-people themselves to manage. Both the Mills reopened on 27 January 1921.

The success of the suit against Wadia and his colleagues showed clearly that there was no legislative protection for active trade union leaders. This case was brought to the notice of the Secretary of State for India by the members of the British Labour Party. The case also led to the adoption of a resolution in the Indian Legislative Assembly in 1921 favouring legislation for the protection of trade unions.

Apart from the Madras Labour Union, a number of other unions were formed after 1918. The Madras Tramwaymen's Union was formed on

5 December 1918, Wadia himself being responsible for the Union. In March 1919 there was a strike by tramwaymen. At a public meeting held with Mrs. Besant in the chair, the Government of Madras were requested to prevent frequent industrial troubles by the creation of arbitration boards. Wadia said that "any party which objects to an arbitration board admits that the wrong is on its side."

The Madras and Southern Mahratta Railway Employees' Union: In 1918 Wadia organized an association called the Mahajanopakara Sangam for the benefit of the workers of the Perambur railway workshops. This was largely an institution for social welfare work. Early in May 1919, one Kalyanasundara Mudaliyar addressed a body of work-people and formed a labour union with one Ranganatham Nayudu as President. This union could not make much progress. A rival union was formed with V. O. Chidambaram Pillai as President. Violent controversies started between these two unions. On 10 February 1920 the two unions were amalgamated and the Madras and Southern Mahratta Railway Employees' Union was formed with Arundale as President. By November 1921 the Union was found to be moribund. With the exception of a certain mistri and a small clique attached to him, no one was taking any interest in the affairs of the Union. Subscriptions were not being collected and weekly meetings were not being held. The Union was gradually revived by Chakkarai Chetty and others, but the progress was slow. In 1925 the Union started a vigorous propaganda to enlist more members and to get itself recognized by the Agent. The first conference of the employees of the railway was held in 1926 under the presidentship of N. M. Joshi and the second in January 1927. By then the membership had fallen, this being attributed to the fixing of the subscription at a day's wage instead of at a flat rate of one anna per month. The attendance at the conference was poor though on the second day it was as much as 3,500. From time to time the workers made representations regarding their grievances, but these produced little result. In March 1929 the strength of the Union was reported as 7,334.

The South Indian Railway Employees' Central Association was started in 1921. This was eventually registered under the Trade Unions Act. The original office-bearers of this Union were railway employees.

The Madras Electric Tramways and Supply Corporation Employees' Union started in 1918 with the support of Wadia was another important union of the early period. Its activities too were not productive of any substantial results. In March 1924 as the management refused to recognize the Union on account of its President, E. L. Ayyar, being an outsider, an employee of the Company was elected as President in place of E. L. Ayyar. But the Union languished until it was revived in July 1925 again with E. L. Ayyar as patron and Surendranath Arya as President. After a subsequent tussle of strength between Ayyar and Arya, the latter was removed and Ayyar was again ap-

pointed President. On demands being made by the Union, "the Company agreed to meet E. L. Ayyar, the President of the Union, as a private gentleman and explain to him their attitude on the various points raised by the Union. In the discussion that took place later on, the Company practically agreed to accede to many of the demands of the men."

Other Madras Unions: The unions mentioned above got themselves registered as soon as the Trade Unions Act came into force. There were a number of other unions started in the twenties which, however, did not get themselves registered until the time of the functioning of the Royal Commission on Labour. Among these were the Kerosene Oil Workers' Union, Madras (1920), the Madras Corporation Scavangers' Union (1921), the Corporation Workshop Employees' Union (1922), the Central Labour Board (1920), the Massey & Co. Workshop Employees' Union (1927), the Diocesan Printers' Union (1927), the Aruvankadu Cordite Factory Labour Union (1924), the Madras Harbour and Port Trust Workmen's Union (1925), the Madras Printers' Union (1921), the Chittivalsa Labour Union (1929), the Railway Labourers' Union, Negapatam (1918) and the Coimbatore Labour Union (1921).

Thus, a considerable number of unions were started in Madras and in certain industrial centres of the Madras Presidency soon after the close of the First World War. Inter-union rivalry was not slow to raise its head. Though some of the unions made a lot of noise, most of them were badly organized, poorly financed, and weakly administered. A number of strikes were started with or without adequate reason and without any regard for the outcome of the strikes. That they were likely to collapse soon was no deterrent to their starting. Emotions got the better of reason. Workers bared their teeth but did not know how to bite.

Trade Unions in the Bombay Presidency: During the 20 years preceding the close of the First World War, there were only four unions of any importance in the Bombay Presidency. These were the Amalgamated Society of Railway Servants of India and Burma formed in 1897, the Bombay Postal Union formed in 1907, a union of warpers of the Ahmedabad cotton mills formed in 1917 and the Clerks' Union formed in 1918.

Industrial unrest during the period 1919 to 1921 was responsible for the formation of a number of unions of postal employees in various parts of the Bombay Presidency, of railway employees in Bombay, Ahmedabad, Karachi, Barsi and Sukkur, of textile workers in Bombay and Ahmedabad, and of Port Trust employees and seamen in Bombay.

The workmen of the carriage and wagon departments of the G.I.P. Railway formed the G.I.P. Railwaymen's (Carriage and Wagon Deptts) Union in 1919. This subsequently became the G.I.P. Railway Workmen's Union. This Union was amalgamated in 1928 with the G.I.P. Railway General Employees'

The members of postal unions took greater interest in the affairs of their unions because they were more educated and more homogeneous than industrial workers. They too permitted outsiders on their executives, not so much for administration as for putting questions and raising debates in the Legislative Assembly on matters connected with the grievances and conditions of service of postal employees. The National Union of Railwaymen in India and Burma was controlled by the members themselves in the first decade. In 1929 the General Secretary of the Union was an ex-railway employee.

The enactment of the Indian Trade Unions Act in 1926 gave much encouragement to trade union organization as registration under the Act led, in those early days, to "recognition" by employers. Recognition, in turn, encouraged membership. The Trade Unions Act permitted 50 per cent of outsiders on executives. Though the number of outsiders seldom came up to this limit, questions of policy were invariably in the hands of outsiders irrespective of the latter's strength on executives.

Early "Outsiders" in Bombay: The extent to which "outsiders" controlled trade unions may be gathered from the fact that in 1929 N. M. Joshi, M.L.A., was a principal office-bearer (i.e., president, general secretary or treasurer) of A.I.T.U.C., the G.I.P. Railway Staff Union and 11 other unions; S. H. Jhabwala of 2 federations and 18 unions; F. J. Ginwala of a federation and 13 other unions: S. C. Joshi of two federations and 11 other unions; S. V. Parulekar of 7 unions and P. S. Bakhle of six unions. As some people gathered directorships of companies without limit, so did others build up flourishing little principalities in the trade union world.

The opinion expressed by the Bombay Millowners' Association on the working of trade unions in its representation to the Royal Commission on Labour may be taken as typical of the views of a large majority of employers of the early 1930's:

> "But (i.e., though there are four unions) it cannot be said that the work-people themselves are really adequately or fully organized. The bulk of the operatives take little or no interest in the affairs of the unions, which are largely controlled by outsiders, though the provisions of the Trade Unions Act regarding the percentage of workers holding official positions are nominally complied with. In many cases, these outsiders make a business of promoting and running trade unions connected with all manner of industries, and possess little or no knowledge of the cotton textile industry. Until the workers themselves take a more active part in controlling the policy and working of the unions, the trade union movement in Bombay is not likely to be as effective in promoting the welfare of the work-people as it is in other countries."

LABOUR-MANAGEMENT RELATIONS IN INDIA

The attitude of employers towards outsiders was further clarified by the Millowners' Association:

> "We have never objected to outsiders interesting themselves in the trade union movement and helping our workers to form unions on right lines. We realize our workmen are incapable of forming unions unaided and require the guiding hand of disinterested workers, but that by no means signifies that every political busy-body should be encouraged to take a hand in inciting strikes. It is unfortunate for the cause of labour that some people should be determined to import into every question connected with our workers the idea that capital and labour are hostile to one another and that the interests of the one are necessarily opposed to those of the other."

Trade Unions in Bengal: Little is known of the formation and activities of trade unions in Bengal prior to 1920. Between 1920 and 1929, some 140 employees' organizations came into existence and of these about 54 went out of existence soon after they were started. Most of the latter must have belonged to the category of strike committees. This type also elected officials, held meetings and collected subscriptions, but they went out of existence after the strike was concluded. Another type of union was the one which came into existence owing to the influence of one or two individuals for a specific purpose. They too ceased to exist after the purpose was achieved.

Of the 86 unions in existence at the time of reporting to the Royal Commission, only a few represented manual workers. The great majority of them represented non-manual workers, especially clerks. The predominance of the white-collar group was in evidence from the very beginning of trade unionism in Bengal.

There were also three federations in Bengal. One was the Bengal Provincial Committee of the A.I.T.U.C., another the All-India Postal and RMS Union, and the third the All-India Railwaymen's Federation.

The Bengal Chamber of Commerce said in its memorandum to the Royal Commission:

> "... most of the so-called unions that employers have had to deal with have sprung up at the time of a strike and are controlled very largely by people other than the workers, whose interests are frequently not those of the labourer. It is a most frequent occurrence to find, when a strike occurs, that the labourers themselves, when they can be interrogated, are unaware of the reason for which they are supposed to be striking; indeed a large majority usually express the desire to return to work, but confess that they are afraid to do so because of the threats that have been made as to what will happen to their houses and families while they are away at their employment. And in addition to the political agitator who stirs

up trouble for his own ends, there is another influence affecting the striker which is peculiar to Bengal, namely, the speculator in the Calcutta jute and gunny market who will finance a strike, and even provide the workers with funds to keep the strike going until he can make his profits out of the market fluctuations caused by the strike. When this aim is achieved, he removes his support from the strikers and is totally indifferent to what then happens to these people."

The Ahmedabad Textile Labour Association: Before leaving off the history of early trade unionism in the country, it is necessary to refer in some detail to the formation and growth of the Ahmedabad Textile Labour Association, which, for various reasons, takes the pride of place among unions in the country. It is considered a model for the rest, an instance of what is so often called sane and responsible trade unionism.

In a White Paper[4] issued in February 1930, the Bombay Government said:

"That it is possible to organize Indian labour on sound trade union lines is shown by what has happened at Ahmedabad. In that centre, there is a strong trade union run by disinterested officials uninfluenced in their dealings on behalf of labour by the policies which it is known they strongly profess. With the assistance of this trade union, it has been possible to attain a considerable measure of success in conciliation methods culminating in a tribunal of two arbitrators, Mr. Gandhi and Seth Mangaldas."

The White Paper went on to add that:

"these harmonious relations may be largely attributed to the personal influence of Mr. Gandhi with the employers as well as the employees."

The Textile Labour Association, Ahmedabad, founded in 1920 is, in fact, a federation of departmental or craft unions of textile labour. It consists of 7 unions, viz., the Engine Room Workers' Union, the Mechanics' Union, the Card, Blow and Frame Workers' Union, the Throstle Workers' Union, the Weavers' Union, the Winders' and Warpers' Union and the Jobbers' and Mukaddams' Union. The Association is thus a central organization managing the various unions.

The objects of the Association are:

"(*i*) to secure effective and complete organization of the workers of all grades and departments, working in the local textile mills;
(*ii*) to direct and coordinate the activities of the various constituent unions;

[4] *Labour Gazette*, Bombay, Vol. 9, February 1930, p. 567.

(*iii*) to foster a spirit of solidarity, service, brotherhood and cooperation among the workers;
(*iv*) to raise the status and improve the conditions of life through internal effort;
(*v*) to develop in the workers a high sense of responsibility in the discharge of their duties to industry;
(*vi*) to obtain and maintain a fair and adequate scale of wages and reasonable hours of work and to provide such trade benefits as funds and conditions permit;
(*vii*) to secure the redress of grievances of the members, to regulate the relations and secure, as far as possible, a settlement of disputes between the employers and the employees by mutual consultation and, on failure, by reference to arbitration, so as to avert avoidable stoppage of work;
(*viii*) to make all necessary arrangements for the efficient conduct and satisfactory and speedy conclusion of authorized strikes, and to provide against lock-out by the employers;
(*ix*) to ensure the enforcement of all legislative enactments for the protection of labour and to promote its civic and political interests; and
(*x*) finally, in due course, to nationalize the textile industry.

Neither the Association nor the constituent unions are registered—a relic of the attitude of Congressmen during non-cooperation days. Each union has its own Council of Representatives elected by the workers triennially. The Council of Representatives elects an Executive Committee consisting of the office-bearers and three to nine workers. A Joint Council of Representatives of the different unions has exclusive authority to determine, with the help of an Advisory Committee, all questions involving the common interest of two or more individual unions. The Executive Committee of the Central Union consists of office-bearers, viz., the president, the treasurer, and the assistant secretary and at least one non-official member from the Executive Committee of each union. The Executive Committee of the Central Union administers the funds and other assets of the individual unions, subject to the control of the Joint Council of Representatives. An Advisory Committee lays down the policy for the guidance of the Council of Representatives, engages the staff, distributes the work among office-bearers and generally advises in all matters connected with the work of the individual unions. At the time of the functioning of the Royal Commission on Labour, the Advisory Committee consisted of Mahatma Gandhi, Miss Anasuya Sarabhai, Shankarlal G. Banker and Gulzarilal Nanda. The office-bearers and members of the Executive Committee of the Central Union were, and still are, "outsiders"—outsiders whom the Bombay Government referred to as "disinterested".

The membership of the Textile Labour Association was not far from 25,000

in the thirties. Its monthly income varied between Rs. 12,000 and Rs. 13,000. Until the Payment of Wages Act came into force, the Labour Association had an arrangement with the millowners for the deduction of the subscriptions of the members from their wages. This was perhaps the first case of check-off in India. The results were wholly encouraging as far as the Union was concerned; it was never starved of funds. However, with the termination of the check-off system, the difficulties of collection increased and the financial position of the Association suffered. Nevertheless, because of the atmosphere created in the early years, there has been no great difficulty in recovering membership fees.

The Ahmedabad Textile Labour Association has undoubtedly steadily progressed as the following figures of membership and finance[5] show:

Year	*Membership*	*Monthly income (Rs.)*	*Monthly expenditure (Rs.)*
1920	16450	5,037	471
1925	13300	3,084	927
1930	21874	9,637	8,642
1939	23766	9,627	11,964
1940	28398	10,504	13,215
1942	45614	21,857	19,680
1944	58208	27,789	21,739
1946	51795	23,042	26,209

Because of its strong finances, the Association has been able to undertake substantial welfare and social activities. It gives victimization benefits and strike aid as occasion arises. The extent of this assistance has not been large as may be gathered from the fact that in 1930 the victimization benefits and strike aid amounted to Rs. 8,193 and Rs. 3,422. In 1933, these figures were Rs. 7,378 and Rs. 684. The Association maintains a hospital and a dispensary. A visiting doctor goes round residential areas to treat patients. The Association maintains many educational institutions and spends a considerable sum of money on education. In 1933 there were 25 institutions with 1,672 students. An amount of Rs. 54,863 was spent on education alone in that year. Another important activity of the Association is housing. In 1927 it made an elaborate enquiry into the housing condition in Ahmedabad and came to the conclusion that some 16,000 tenements were unfit for residence and should be demolished. In 1929 the Municipality sanctioned a loan of Rs. 4½ lakhs for building 500 tenements. The colony is situated at Kalyangaon. The Association carries on other activities also. It has an

[5] S. D. Punekar: *Trade Unionism in India*, p 374.

arrangement by which compensation amounts received on behalf of minors can be kept with it and drawn upon in convenient instalments. A physical culture centre and a circulating library are also maintained.

It is necessary to look into the reasons for the outstanding success of this Association which has prospered in spite of its failure to seek affiliation with any central organization. It was in 1918 that the moral foundations of trade unionism in Ahmedabad were laid. It all started with the contemplated abolition or reduction of the "plague bonus" towards the end of 1917, when the workers demanded a 50 per cent increase in wages as dearness (cost of living) allowance. The workers' leader was Miss Anasuyabehen Sarabhai, a social worker and sister of Ambalal Sarabhai, Chairman of the Millowners' Association. An Arbitration Board consisting of Mahatma Gandhi, Vallabhbhai Patel, and Shankarlal Banker on behalf of workers and of three millowners led by Ambalal Sarabhai on behalf of employers, with the Collector as Umpire, was set up. As some workers went on strike without waiting for the functioning of the Arbitration Board, the employers said that they were no longer bound by the agreement to arbitrate and that unless the workers accepted a 20 per cent increase in wages and returned to work, they would dismiss all workers. To a suggestion by Shankarlal Banker that a larger increase in wages be given, the Millowners were completely outspoken. They said:

> "He assumes that mills are run out of love for humanity and as a matter of philanthropy, that their aim is to raise the condition of the workers to the same level as that of the employers. His approach is wrong. In reality mills are privately owned and are run with no other motive than to make profit.... The employment of labour and conditions of employment are determined purely on the basis of supply and demand. Mr. Banker's approach is impossible, unachievable, visionary and Utopian. It is not practical for this world, for our country and for this city."

Mahatma Gandhi, piqued by the stubborn attitude of the employers, asked the workers to compromise at a 35 per cent increase instead of a 50 per cent increase and not to return to work until that was granted. He warned the workers "not to indulge in mischief, quarrelling, robbing, plundering or abusive language or cause damage to millowners' property but to behave peacefully."

Workers had not trained themselves to so much hardship or discipline. The potency of the weapon of strike had not yet been fully exploited or realized: it had so far been used only as a hit and run weapon. Strikes in the past had largely been demonstrations—a show of anger and impatience, a mere shaking of the fist but not striking. It had seldom been used as a method of clinching issues. Confronted with prolonged starvation, the workers said:

"What is it to Anasuyabehen and Gandhiji? They come and go in their car; they eat sumptuous food; but we are suffering death agonies".

This criticism, sincere but mistaken, stung Gandhiji to the quick. He felt the justice of it and declared:

"I cannot tolerate for a minute that you break your pledge. I shall not take any food nor use a car till you get a 35 per cent increase or all of you die in the fight for it."

Faced with such a difficult situation, the millowners relented and agreed to a compromise. The terms of the agreement were:

(1) On the first day following the settlement, a 35 per cent wage increase would be given to the workers. This vindicated the honour of the workers.
(2) On the second day the wage increase would be 20 per cent. This vindicated the honour of the employers.
(3) From the third day till the date of decision by an arbitrator an increase of 27½ per cent would be given. This meant the beating of retreat by both the parties to an equal extent.
(4) The dispute was to be referred to arbitration and depending on its result, 7½ per cent increase was to be given in addition or refunded.

Face-saving was thus perfected into a fine art. The arbitration by A. Dhruve, Professor of Sanskrit, Gujerat College, Ahmedabad, resulted in a 35 per cent increase. The strike came to an end on 20 March, 1918. For further details, the reader may consult M. H. Desai's book entitled *A Righteous Struggle—A Chronicle of the Ahmedabad Textile Labourers' Fight for Justice.*

As a result of this dispute, Mahatma Gandhi suggested that in future too all disputes should be settled through arbitration and not strikes. Ambalal Sarabhai, President of the Ahmedabad Millowners' Association, called a meeting on 8 December 1919 of the Managing Committee of the Association and the representatives of labour with a view to establishing a permanent machinery for the settlement of disputes. Soon Sarabhai was replaced by Seth Mangaldas as President of the Ahmedabad Millowners' Association. On 4 April 1920, the Association met and passed the following resolution:

"If any dispute or difference of opinion arises between the millowners and work-people and, if they are not able to settle it among themselves, such dispute shall be settled by Mahatma Gandhi and Seth Mangaldas. For doing so, they are invested with such powers as are ordinarily given to arbitrators on such occasions."

This arbitration board was responsible for settling many disputes in Ahmedabad.

Thus started an era of voluntary arbitration in Ahmedabad which served the parties extremely well in the early years of trade unionism and helped to build up industrial relations on a sound basis. The arbitration board consisting of Mahatma Gandhi and Seth Mangaldas was not always able to settle disputes: the two arbitrators differed on several occasions and had to call in an umpire. Pandit Madan Mohan Malaviya acted as sarpanch (umpire) in a dispute relating to bonus in October 1921. On another occasion, in July 1923, F. X. De Souza, District and Sessions Judge, acted in a similar capacity. Sometimes some other person, e.g. Professor Anand Shankar B. Dhruve, took Gandhiji's place as arbitrator. Appendix XII to the Bombay Government's written memorandum submitted to the Royal Commission on Labour contains over 20 instances of arbitration under this arrangement.

In view of the great success that has attended the functioning of the Ahmedabad Textile Labour Association, it would be pertinent to ask why a number of other unions cannot similarly be built up into powerful and responsible organizations of labour. The Ahmedabad Textile Labour Association became what it is primarily due to the personality of Mahatma Gandhi. Of that personality the Bombay Government said, even while the Indian National Congress was non-cooperating with the Royal Commission on Constitutional Reforms (The Simon Commission) and the Royal Commission on Labour (the Whitley Commission): "The position of Mr. Gandhi as a peace-maker in industrial disputes in Ahmedabad is a remarkable one, and is due to the fact that his political and spiritual ideals have won him devoted followers both in the ranks of capital and in those of labour. His impartiality is unquestioned, for it is known that he does not put forward a demand or support a proposal from labour unless he is convinced, in his own mind, that it is fair and reasonable. He is as severe in his condemnation of indiscipline among the workers as he is of failures on the part of millowners to treat their labour fairly. It is his personal influence that has kept the peace so well in Ahmedabad as compared with Bombay and prevented the dislocation of the industry by ill-advised strikes or lock-outs." It may well be asked how many other persons have, during all these 40 years or so, lived up to these ideals of Gandhiji or instilled in workers that measure of confidence and trust which is necessary to endear themselves to workers even as they chastised them for indiscipline and other shortcomings? It is said that Gandhiji instructed his assistants working in the labour field to apply themselves wholly and exclusively to the cause of labour and not to cast covetous glances at the more glamorous sphere of public activity, viz., politics. Even in days when the plums of political office were not available, politics had its attractions and temptations. If one could not become a Minister of the State, one could still aspire to become a hero of the nation by sustained

work in the limelight of political agitation. That Gandhiji managed to keep a number of persons screwed down to labour work and away from politics is clear evidence of his realization of the importance of labour problems and, what is even more relevant, of his refusal to measure labour problems by the yardstick of political considerations. When another such person comes on the scene to give a selfless lead to labour, one might expect more unions of the type of the Ahmedabad Textile Labour Association.

Gandhiji's own explanation given in 1941 of the success of the Ahmedabad Union may be quoted: "Ahmedabad Labour Union is a model for all India to copy. Its basis is non-violence, pure and simple. It has never had a setback in its career. It has gone on from strength to strength without fuss and without show. It has its hospital, its schools for the children of the millhands, its classes for adults, its own printing press and khadi depot, and its own residential quarters. Almost all the hands are voters and decide the fate of elections. They come on the voters' list at the instance of the Provincial Congress Committee. The organization has never taken part in the party politics of the Congress. It influences the municipal policy of the city. It has to its credit very successful strikes which were wholly non-violent. Millowners and labour have governed their relations largely through voluntary arbitration. If I had my way, I would regulate all the labour organizations of India after the Ahmedabad model. It has never sought to intrude itself upon the All India Trade Union Congress and has been uninfluenced by that Congress. A time, I hope, will come when it will be possible for the Trade Union Congress to accept the Ahmedabad method and have the Ahmedabad organization as part of the All-India Union. But I am in no hurry."

The conditions since Independence are, by no means, favourable to the creation of sound labour leadership out of the politicians rushing to that field. The top labour leaders in the ranks of the ruling party have taken the first opportunity to get themselves installed as Ministers, leaving the field of labour wide open to opportunists whose only object in getting a foothold in the labour field is to improve their own prospects in life. Even today there is no second union of the type of the Ahmedabad Textile Labour Association anywhere in the country. The Ahmedabad union was, if one might so put it, a mere accident, brought about by the impress of Gandhiji's magnetic personality on the shrewd commonsense and realism of the local mill magnates. That is the reason why it cannot so easily be reproduced elsewhere and why it promises to remain a show-piece of the nation on the itinerary of every visiting foreign dignitary.

All India Trade Union Congress: Trade unionism received a great fillip with the establishment of the All India Trade Union Congress in 1920. The All India Trade Union Congress was established evidently to coordinate the activities of a large number of trade unions which were being formed hap-

hazardly. While, no doubt, the immediate provocation for the sudden establishment of the All India Trade Union Congress was the nomination by the Government of India to the panel of the Commission of Enquiry under the International Labour Organization without any reference to the workers of India and the realization by labour leaders that such consultation was not possible in the absence of a central organization of workers, the All India Trade Union Congress, when once established, took it as one of its primary responsibilities the expansion of trade unionism to the utmost possible extent. We shall deal at greater length with the All India Trade Union Congress in the next chapter.

Progress of Trade Unionism between 1918 and 1925: Reliable statistics of trade union growth are not available for the period prior to the effective implementation of the Indian Trade Unions Act, 1926. But a somewhat disconnected account can be pieced together from the annual reports of certain provincial Governments and the large amount of information supplied by various parties, including Governments, to the Royal Commission on Labour.

1918, which may be deemed to be the starting point of modern trade unionism, witnessed the formation of 7 unions, of which 4 were in Madras, 2 in Bombay and 1 in Calcutta. In 1919, 10 more unions were formed, 5 in Bombay, 2 in Madras, and 1 each in Bengal, U.P. and Punjab.

1920, the year of the formation of the All India Trade Union Congress, witnessed a large-scale expansion of the movement. The Report of the First Session of the All India Trade Union Congress said that some 60 and odd unions were definitely affiliated to that organization and that over 40 other unions had expressed their sympathy with, and support to, the Trade Union Congress. The number and strength of the affiliated unions were given as follows:

	Number of affiliated & sympathetic unions	*Number of affiliated unions*	*Membership of affiliated unions*
By Provinces			
Bombay	56	44	46,881
Bengal	5	1	2,505
U.P.	8	3	15,800
C.P.	6	2	128
Sind	2	1	128
Madras	16	8	3,559
Bihar	1	—	—
Punjab	9	4	70,253
Delhi	2	—	—
Indian States	2	1	1,600
	107	64	140,854

	Number of affiliated & sympathetic unions	Number of affiliated unions	Membership of affiliated unions
By Industries			
Railways	21	11	91,427
Textiles	12	9	7,719
Shipping	4	3	19,800
Transport	4	2	2,470
Chemical	7	6	856
Engineering	8	7	7,590
P & T	15	5	1,685
Printing and paper	7	3	1,844
General	29	18	7,463
	107	64	140,854

These figures, by themselves, have little significance. It is said, for instance, that the N.W. Railway Union had a membership of 70,000 while another union had a membership of only 18. If that be so, to treat each of these as one union seems meaningless. Unions varied greatly in size and strength. Out of the 64 unions affiliated to the All India Trade Union Congress only three had memberships exceeding 10,000 while 17 had memberships below 100. Moreover, though the new organization was called an all-India organization, the bulk of its affiliation was from the Bombay Presidency. This is inevitable when a federation is brought into existence all of a sudden and is not the natural culmination of sustained efforts at building up the trade union movement throughout the country over a period of time.

A number of important unions did not get themselves affiliated with the All India Trade Union Congress. The most important of these was the Ahmedabad Textile Labour Association with a total membership of about 16,450 in 1920. The All India Postal and R.M.S. Association with about 20,000 members was another. Dr. Punekar estimates the total trade union membership in 1920 at 250,000. Even this figure was almost certainly on the high side as may be seen from the more reliable figures of future years. The figure of 500,000 for trade union membership put forward before, and apparently accepted by, the International Labour Organization was clearly an exaggeration.

With the onset of acute trade depression in 1921, the fortunes of the trade union movement declined. No longer was it possible for unions to secure wage increases; rather their efforts were concentrated on preventing any appreciable reduction in wages. By 1923, according to Dr. P. S. Lokanathan,[6]

[6] P. S. Lokanathan : *Labour Movement in Madras.*

the labour unions in Madras came virtually to an end. The Directory of Trade Unions published in 1925 by the All India Trade Union Congress gave a list of 167 unions which existed in 1924 as follows:

TRADE UNIONS IN INDIA IN 1924

Group	Total number of unions	Number of unions submitting returns	Membership of unions submitting returns
I. *Transport*			
i) Railway	25	10	97,702
ii) Shipping	6	3	14,500
iii) Other transport	6	3	6,300
II. *Textile*			
i) Cotton	23	17	30,795
ii) Jute	—	—	—
III. *Engineering and Allied industries*			
i) Chemical, glass, pottery, etc.	3	1	500
ii) Iron, Steel, Metals	3	2	9,000
iii) Other Engineering	5	2	825
IV. *Non-manual*			
i) Banking	3	2	1,610
ii) Currency	4	3	1,120
iii) Clerks, teachers	4	1	500
iv) Commercial	4	1	2,600
V. *Miscellaneous*			
i) Govt. and Municipal servants	37	4	9,150
ii) Mining	2	1	400
iii) Paper and Printing	5	3	710
iv) Posts & telegraphs	18	14	37,625
General Labour	19	1	10,000
	167	68	2,23,337

That these figures were only rough may be seen from the fact that the All India Trade Union Congress's official organ for October-November 1924 gave the total number of unions as 183. The membership given in the Directory of Trade Unions must have been an optimistic estimate made by an organization anxious to establish its existence. The figures published[7] by

[7] Note on the Working of the Indian Trade Unions Act of 1926 for 1935-36.

the Government of India mentioned the number of registered unions as 29 in the year 1927-28. Of these, 28 which furnished returns accounted for a total membership of only 100,619. The Royal Commission on Labour says in its report that up to the end of 1929, 87 unions were registered with 183,000 members. Referring to the claim of the All India Trade Union Congress that in December 1929 it had 51 unions affiliated to it with a total membership of 190,436, the Royal Commission stated that this figure included one large union whose figures were questionable. "Membership is everywhere loosely defined," says the Commission, "and many unions retain on their books members who have long ceased to pay subscriptions. At least one union has been formed which claimed no subscription from its members." It, therefore, seems a safe guess that even towards the close of the 1920's the total membership of registered unions did not exceed, say, 200,000.

The scramble for the formation of federations started almost with the first flush of trade union growth. The Directory of Trade Unions gives the following list of 8 federations in 1924, i.e., within some 6 years of the formation of the first effective union:

LABOUR FEDERATIONS 1924

Name of Federation	*Year of formation*	*No. of unions affiliated*	*Total membership*
1. Ahmedabad Labour Association	1920	5	14,000
2. All-India Currency Union	—		800
3. All-India Postal & R.M.S. Association, Calcutta	1920	9	30,000
4. All India Railwaymen's Federation, Calcutta	1921	—	30,000
5. All India Trade Union Congress, Bombay	1920	40	100,000
6. The Bengal Trade Union Federation, Calcutta	1922	3	4,000
7 The Central Labour Board, Bombay	1922	7	6,000
8. The South Indian Railway Labour Board, Coimbatore	1924	5	10,000

Growth of Trade Unionism between 1925 and 1934: The trade union movement which was united till 1925 entered on an unfortunate era of disunion and factions about that time. By then the communist movement had started influencing trade unionism, especially during strikes and lock-outs. In 1924 a number of left-wing trade union workers were arrested at Kanpur for criminal conspiracy and sentenced to various terms of imprisonment. Thus

began the communists' attack on trade unionism and Government's attack on communism.

Communist leaders found a safe haven for their political propaganda in the trade union movement. The rank and file of trade union membership provided the ideal ground for the growth of communistic ideas. Soon trade unionism took a violent turn. The establishment of the Workers' and Peasants' Party by the communists in 1927 had, as one of its avowed objects, the organization of new unions measuring up to its ideology and the capturing of existing ones. The Girni Kamgar Union started among the textile labour of Bombay was one such.

With the establishment of the Workers' and Peasants' Party in 1927 by communist elements, the Indian trade union movement started showing signs of a split into 'rightists' and 'leftists'. Questions relating to the participation of the All India Trade Union Congress in the International Labour Conference at Geneva, the affiliation of the Trade Union Congress with the Third International at Moscow on the one hand and with the International Federation of Trade Unions at Amsterdam on the other found the 'rightists' and 'leftists' in opposite camps. The two groups started their efforts to gain ascendancy over the affairs of the Congress. The result was that in many important industrial centres of the country rival leadership started claiming the allegiance of members and confounding them.

However between 1925 and the actual split in 1929, the All India Trade Union Congress built itself up adequately. It claimed the following affiliated membership at its different annual sessions:

Session	*Total number of affiliated unions*	*Total affiliated membership*
5th Session — February 1925	31	90,000
6th Session — January 1926	52	125,000
7th Session — January 1927	57	125,000
8th Session — December 1927	59	125,000
9th Session — December 1928	42	98,600
10th Session — November 1929	51	189,436

The split in the All India Trade Union Congress, the failure of the General Strike in Bombay, and the prosecution of communists in the Meerut trial, all during the year 1929, inevitably weakened the trade union movement and made it ineffective. Most strikes began to fail. Both the communist-controlled All India Trade Union Congress and the organization of the seceders called the Indian Trade Union Federation became equally ineffective.

The early thirties saw a greatly-weakened trade union movement. Two other factors added to the misfortunes of the movement. Gandhiji's civil disobedience movement engaged the attention of most political leaders and

pinned them down to politics to the almost complete neglect of trade unionism. Moreover, the country was in the grip of a severe economic depression which was highly detrimental to trade union activity. During periods of slack business, strikes are a God-sent boon to employers. Employers thereby get the golden opportunity they invariably seek to reduce the labour force and to get rid of troublesome trade unionists. Employers used the depression of the thirties to full advantage. Workers were retrenched and demoted and their wages slashed.

The number and membership of registered trade unions in India during this period, as revealed by the Government of India's reports on the working of the Trade Unions Act, were as follows:

Year	*Number of registered unions*	*Number of unions submitting returns*	*Total membership*	*Average membership per registered union*
1927-28	29	28	100,619	3594
1928-29	75	65	181,077	2786
1929-30	104	90	242,355	2693
1930-31	119	106	219,115	2067
1931-32	131	121	235,693	1948
1932-33	170	147	237,369	1615
1933-34	191	160	208,071	1300
1934-35	213	183	284,918	1557
1935-36	236	205	268,326	1309

The sudden decrease in the average membership per registered union from 1930-31 onwards reflects the havoc that the split played on the trade union movement. More will be said of the split and of the efforts made to achieve unity in a later section dealing with the central organizations of labour.

Trade Unionism between 1934 and 1939: The five years preceding the commencement of the Second World War favoured the growth of the trade union movement and enabled communism to recover from the shocks it had received from the Meerut trial. The economic depression of the twenties had gradually passed away, and industry and business began to look up. At the same time, employers, particularly in the textile industry, gave enough cause for labour unrest. They wanted to introduce schemes of rationalization, retrenchment and wage cuts on an extensive scale. Workers sharply reacted to these measures by calling an All-India Textile Workers' Conference at Bombay on 28 January 1934. The Conference passed a resolution calling for a country-wide general strike of all textile workers "in view of the brutal offensive, started by textile employers all over India against the textile workers as a class, exhibited in (*a*) the inhuman wage cut,

(*b*) intensive rationalization, and (*c*) increasing unemployment and in view of the inadequacy and futility of the local and political strikes." Some 20 demands were made which, apart from dealing with wage cuts, rationalization and retrenchment, asked for an eight-hour day, annual leave for one month, a minimum wage of Rs. 45, etc. Thirty-four out of the 84 mills of Bombay had already closed down throwing out of employment 61,000 persons. Here was explosive material for the firebrand of a union leader to play with. Some of the mills which had not closed down reduced the number of shifts. Wage reductions became quite common, being 12½ to 25 per cent in Ahmedabad, 15 in Madras, 12½ in Sholapur, 20 in Nagpur, etc. All textile centres were affected by the employers' schemes of rationalization and retrenchment. Prolonged strikes took place in Bombay, Sholapur and Nagpur. The strike in Bombay which lasted from April to June 1934 involved 90,000 workers. The strike in Sholapur lasted from February to May and that in Nagpur from May to July 1934. Out of a total of 4,775,559 man-days lost in that year, more than two-thirds were attributable to the textile strikes. The communist organization and its various committees and sub-committees, which were largely responsible for the strikes, were declared unlawful associations by the Government of India in July 1934. Besides, the activities of a number of communist leaders were restricted.

Though the repression of 1934 checked industrial unrest for a while, the root cause of the unrest, viz., unemployment and inadequate wages, continued and big strikes occurred between 1937 and 1939. Among these were the general textile strikes of Kanpur (1937-39), the jute workers' strike at Calcutta (1938), the Digboi Oilfields Strike (1939) and the U.P. Glass Bangle Factories Strike (1939).

Increased industrial unrest acts as a tonic to a waning trade union movement. Fresh enlistment of members and some attempts at collection of overdue subscriptions are feverishly made so long as the excitement of a big strike lasts. The number of registered unions increased appreciably from 241 in 1935-36 to 555 in 1938-39. The table below gives the progress of trade unionism between 1934 and 1939.

Year	*Number of registered trade unions*	*Number of unions submitting returns*	*Membership of unions submitting returns*
1934	191	160	208,071
1935	213	183	284,918
1936	241	205	268,326
1937	271	228	261,047
1938	420	343	390,112
1939	562	394	399,159

This was not a steady and natural growth. The most important reason for the spurt was the grant of labour representation in legislatures under the new constitution. Trade unions were recognized for the purpose of election only if they fulfilled certain conditions, such as that they must have been in existence for not less than two years and registered for at least one year, that they must have had more than 250 members who had paid subscriptions for a whole year, and that they must have complied with the requirements of the Indian Trade Unions Act in regard to audit and inspection of books by the Registrar. An important morale-booster was the advent of popular ministries in seven provinces pledged to implement the Congress election manifesto which had promised much to labour. For the first time in the history of the country workers felt the presence of sympathizers in Provincial Governments. The trade union movement would no longer be suppressed and would serve its legitimate purpose. The official communist view of the role played by Congress Ministries was, however, different. The history of the All India Trade Union Congress records that "the expectation of the working class that Congress Ministries will take measures to improve their working and living conditions was belied by the anti-working class policies pursued by the ministries." Another significant factor was the achievement of a measure of unity in the movement. In 1938 an agreement was arrived at whereby the National Trade Union Federation affiliated itself with the All India Trade Union Congress.

Trade Union Development during the Second World War, 1939-45: Conditions during the period of the Second World War were, on the whole, conducive to the growth of a protected, if not pampered, trade union movement. On the declaration of the war, the Congress ministries in the provinces resigned for political reasons. The administration of those provinces was taken over by the Governors who were assisted by Advisers drawn from the permanent services. Thus the Governments both at the centre and in the provinces were controlled by persons whose one and unalterable aim was the winning of the war and the mobilization of all resources to that end. It was realized even during the early stages of the war that the industrial production of India would make a very great contribution to the cause of the allies, particularly in certain theatres of war such as the Middle East, South East Asia, and the Far East. It was, therefore, of the utmost importance that Indian industry should expand to its maximum capacity and work to its maximum limits of endurance. Various measures were taken to that end. We are, however, here concerned only with such aspects of that policy as related to labour.

With the steady and rapid growth of industries, industrial employment registered a steep rise from 17,51,137 in 1939 to 26,42,977 in 1945. Here was a vast additional manpower which had unexpectedly managed to secure highly

profitable industrial employment for the first time and was willing to be guided by trade union leaders who promised even much greater prosperity and success if only they joined the trade union movement. And when the rustic, hitherto unaccustomed to handling much cash, came into possession of what seemed to him a large amount, he obviously did not mind parting with a few coins as membership fee if only the trade union leaders would assure him that he could continue to jingle coins in his pockets regularly and for all time to come.

But the main impetus to trade union organization came from the measures that the Governments took as part of the war effort. First, they wooed and won the affections of labour. At first the success of Government in this matter was limited. The All India Trade Union Congress, which by then had achieved a semblance of unity, was still communist-dominated. In the early stages of the war, when Germany and Russia joined hands in treaty and alleged friendship, communists in India were opposed to the war effort and were consequently arrested and detained as unpatriotic elements. But with the break-up of the alliance between Germany and Russia and the declaration of war between them, Russia was welcomed into the bosom of the allies and so were the communists into that of Government. The communist leaders who had been detained were released. They, in fact, became the staunchest supporters of the war effort in the whole of India.

The attitude of the All India Trade Union Congress towards the war effort was, however, not so smooth-sailing. Though unity had at last been secured in the trade union movement just before the war, the All India Trade Union Congress was not a coherent body. The top leadership was still divided. There were elements in sympathy with the Indian National Congress and those in sympathy with communists. To accommodate all these viewpoints, the All India Trade Union Congress adopted an attitude of non-committal for itself towards the war while permitting individual unions to decide upon their own course of action. Such an indecisive and nebulous attitude towards the war suited both communists and the Congress in the early stages of the war—the former because Russia and Germany were still allies and the latter because it was not cooperating with the war effort for its own reasons. However, as soon as Russia joined the allies and the communists started throwing their whole weight behind the war machine, the parting of ways between communists and Congressmen had come. It paid the Trade Union Congress not to clinch issues. During the early stages of the war when the All India Trade Union Congress was still hesitant and undecided, the Radical Democratic leader, M. N. Roy, started a separate central organization of labour called the Indian Federation of Labour with the specific object of supporting the war effort. Naturally the Federation received the immediate support of Government and enjoyed ample financial subsidies and patronage from Government right till the end of the war. The arrest of Congress leaders

left the All India Trade Union Congress in the hands of communist leaders, who, without altering the official policy of neutrality, could still ardently support the war effort. Thus labour received nothing but encouragement from Government during the war years; the days of Government apathy and antipathy were gone, at any rate, temporarily.

The adverse effects of the war on the country's economy were not slow to develop. Production, no doubt, shot up in every sphere, but the bulk of it was meant for the war effort and not for internal civilian consumption. While large numbers of people got remunerative employment and came into possession of vast sums of money through wages, the serious shortage of essential articles and consumer goods pushed up prices and started an aggressive inflation. Money wages, no doubt, increased, but, in spite of adjudications and strikes, did not rise in proportion to the rise in the cost of living. This was only to be expected, for in an economy in which availability was woefully short of requirements, inflationary tendencies were bound to be accentuated rather than checked by wage increases meant to liquidate the rising prices. The result was that real earnings plunged to about two-thirds of the pre-war level by the time the war was half-way through, as may be seen from the following table:

INDEX OF REAL EARNINGS 1939-45

Year	*Index of earnings*	*All-India consumer price index*	*Index of real earnings*
1939	100.0	100	100.0
1940	105.3	97	108.6
1941	111.0	107	103.7
1942	129.1	145	89.0
1943	179.6	268	67.0
1944	202.1	269	75.1
1945	201.5	269	74.9

This table is interesting. It shows clearly that the adverse effects of a war economy are not felt for the first one or two years and that wage increases obtained by agitation and conceded by employers in their anxiety to maintain production and their own level of profits have, at a time when essential goods are not yet in short supply, temporarily the effect of raising real wages. But when once shortages start and the economy is in the grip of inflation, no amount of wage increases, however substantial, can serve even to maintain the pre-war level of real earnings.

To meet this situation of falling real wages, the Government of India and the Provincial Governments had to set up conciliation boards, courts of

inquiry, and eventually adjudication tribunals on an extensive scale. The Bombay Government set up a conciliation board for the textile industry of Bombay while the Government of India set up a court of enquiry to report on the claims for dearness allowance by railway workers. Soon strikes and threats of strikes assumed such menacing proportions that the Government of India found it necessary to assume statutory powers for ordering compulsory adjudication of industrial disputes. This was provided for by rule 81-A of the Defence of India Rules, which, for the first time, well and truly laid the foundations of compulsory adjudication, which is now so unalterably the mainspring of the mechanism of industrial relations in the country.

The introduction of the system of compulsory adjudication led to the inevitable result of increasing the number of industrial disputes. Adjudicators were generally sympathetic towards workers. Moreover, employers were more amenable to demands during the war than they proved to be subsequently. Many war contracts were on a "cost plus" basis, which meant that any increased cost arising from enhanced wages could safely be passed on to Government without their having any effect on profits. Further, profits out of war contracts were so substantial that any work stoppage was wholly against the interest of the employer. The employer was concerned only with increased production and was not unduly worried about wage costs. The raising of disputes before governmental authorities with a view to persuading them to refer them to adjudication and the prosecution of cases before adjudicators required competent and knowledgeable trade union leaders. Thus both trade unions and trade union leaders came into existence in large numbers.

While labour's economic position rapidly deteriorated, the exigencies of war necessitated the placing of a number of restrictions on the freedom of labour to act as it liked. The National Service (Technical Personnel) Ordinance, 1940, ensured fair distribution of technical personnel between Government industrial undertakings and private industries. The tribunals set up under the Ordinance could require industrial undertakings to release technical personnel in favour of crown factories and public employment. The workers so transferred could not refuse the transfer; nor could they be discharged from public service without the previous permission of the tribunal. Similarly no employer in any undertaking could discharge or dismiss technical personnel belonging to defined categories without obtaining the previous permission of tribunals. Similarly the Essential Services (Maintenance) Ordinance of 1941 controlled the service of persons employed in notified essential undertakings. No worker to whom the Ordinance applied could refuse or cease to work and no employer was allowed to terminate the services of such a person without reasonable cause shown to the satisfaction of the appropriate tribunal. Thus the hands of both labour and management were tied by legislative measures and it was but natural that the many disputes arising from such a

situation had to be settled through constitutional means. Here again trade unions were most essential to ensure that labour got a fair deal before such tribunals.

Yet another reason for the rapid expansion of the trade union movement was the establishment of a permanent tripartite consultative machinery by Government for evolving policy and procedure in the field of labour. In 1942 the Government of India, after prior consultation with the representatives of labour and management, called a tripartite conference. Out of this conference was born the permanent consultative machinery consisting of the Indian Labour Conference and the Standing Labour Committee. The Conference consisted of 44 members, 22 from the various Central, Provincial and State Governments and 11 each from employers and workers. The Standing Labour Committee was composed of 20 members, 10, 5 and 5 being drawn from the three parties. The representation of labour on these bodies was based on the strength and importance of the various labour organizations. There was thus an immediate scramble for both trade union build-up and affiliation, even as representation on the International Labour Conference had led to the urgent constitution of the All India Trade Union Congress in 1920.

All these favourable circumstances gave a great boost to trade union organization. Between 1939-40 and 1944-45 the number of registered trade unions increased from 666 to 865, i.e., by 29.7 per cent and the total membership of unions submitting returns from 511,138 to 889,388, i.e., by 70.4 per cent as may be seen from the following figures:

Year	*Number of registered trade unions*	*Number of trade unions submitting returns*	*Membership of trade unions submitting returns*	*Average membership per union*	*Number of women members*
1939-40	667	450	511,138	1136	18,612
1940-41	727	483	513,832	1064	19,417
1941-42	747	455	573,520	1260	17,094
1942-43	693	489	685,299	1401	25,972
1943-44	761	563	780,967	1386	26,866
1944-45	865	573	889,388	1552	36,315

One favourable feature that may be noticed here is that during this period the average membership per union increased from 1136 to 1552. This shows that comparatively large unions were formed and that the tendency to proliferation and fission had not yet started. There were obviously not many competing central organizations of labour. The two central organizations that existed had ample virgin field to conquer and did not have to poach too much on each other's preserves. The number of women trade unionists was

very small, being only 4 per cent of the total union membership. These figures may be compared with the figures for 1957-58 when out of a total membership of 29,07,443 for unions submitting returns as many as 3,10,594, i.e., 10.7 per cent were women. More recently the percentage of women has varied between 9 and 11 per cent of the total.

In 1945 there were still many unregistered unions. In Bombay alone out of 302 unions with a reported membership of 328,584, only 114 with a membership of 244,868 had got themselves registered under the Indian Trade Unions Act, 1926.

CHAPTER III

TRADE UNION MOVEMENT AFTER INDEPENDENCE

***Rate of Growth after 1945*:** There was a large-scale expansion of the trade union movement after the Second World War—particularly after Independence in 1947. This is clear from the figures given below:

GROWTH OF TRADE UNIONISM AFTER 1944-45

Year	*Number of registered trade unions*	*Number submitting returns*	*Membership of unions submitting returns*			*Average membership per union*	*Percentage of women to total membership*
			Men	*Women*	*Total*		
1944-45	865	573	8,53,073	36,315	8,89,388	1552	4.1
1945-46	1007	585	8,25,461	38,570	8,64,031	1480	4.5
1946-47	1833	998	12,67,164	64,798	13,31,962	1335	4.9
1947-48	2766	1620	15,60,630	1,02,299	16,62,929	1026	6.2
1948-49	3150	1848	18,31,514	1,19.355	19,60,107	1061	6.1
1949-50	3522	1919	16,88,887	1,19,565	18,21,132	949	6.6
1950-51	3766	2002	16,48,966	1,06,424	16,56,971	577	6.1
1951-52	4623	2556	18,46,992	1,36,257	19,96,311	781	6.8
1952-53	4934	2718	19,36,233	1,56,567	20,99,003	772	7.5
1953-54	6029	3295	19,25,446	1,76,476	21,12,695	641	8.4
1954-55	6658	3545	19,40,425	2,29,287	21,70,450	612	10.6
1955-56	8095	4007	20.34,192	2,40,045	22,74,732	568	10.6
1956-57	8553	4399	20,96,657	2,80,105	23,76,762	540	11.8
1957-58	10,045	5520	26,82,000	3,32,000	30,14,000	546	11.0
1958-59	10.228	6040	32,55,000	3,92,000	36,47,000	604	10.8
1959-60	10,811	6588	35,32,000	3,91,000	39,23,000	596	10.0
1960-61	11.175	6829	34,38,000	3,44,000	37,82,000	554	9.1

SOURCE : *Indian Labour Year Book*, 1962, p. 87, and *Indian Labour Statistics*, 1960, p. 79.

There were a number of reasons for this development, the more important being (*i*) the cumulative effect of the acute economic distress arising from war conditions and the removal of the war-time restrictions on strikes, (*ii*) the creation of three more central organizations of labour and the keen competition between them to capture the trade union movement, (*iii*) the labour policy of the Government after Independence based on adjudication rather than collective bargaining, and (*iv*) the undoubted growth of the spirit of trade unionism among workers as a result of the changed outlook in the country.

Economic Distress: The index of real earnings reached the rock-bottom of 67 (1939=100) in the year 1943. Shortages of essential goods and their high prices caused much suffering to the poorer classes. The clamour for relief could no longer be ignored. The requirements of industrial labour in particular had to receive attention if industrial production was not to come to a standstill. The Government was already faced with an unparalleled political agitation and could not afford to let a deteriorating economic situation lend weight and substance to the public clamour asking the foreign ruler to quit. The Bengal famine had dealt a severe blow to the prestige of Government and shaken some at least among the ruling circles from complacence and smug satisfaction. So in the latter half of the war Government struggled to moderate the effects of what was already a runaway inflation. The grant of dearness allowance to neutralize at least partially the increased cost of living became an accepted policy in the matter of adjustment of wages. Price control, procurement and rationing tried to mitigate the hardships of soaring prices but did not succeed beyond a point. The grant of foodgrain concessions, particularly to colliery and plantation workers, became inevitable. The securing and the continuance of such facilities and the increasing litigation in regard to wages called for the strengthening of the trade union movement.

In spite of all these efforts the index of real earnings of workers continued to be no more than about 75 in the years immediately following the termination of the war.

INDEX OF REAL EARNINGS OF FACTORY WORKERS (1945-58)

Year	*Index of earnings*		*All India Consumer price index*		*Index of real earnings*	
	Base 1939=100	*Base 1947=100*	*Base 1939=100*	*Base 1947=100*	*Base 1939=100*	*Base 1947=100*
1945	201.5	—	269	—	74.9	—
1946	208.6	—	285	—	73.2	—
1947	253.2	100.0	323	100.0	78.4	100.0
1948	304.0	120.0	360	111.7	84.4	107.4
1949	340.3	134.4	371	115.0	91.7	116.9
1950	334.2	132.0	371	115.8	90.1	114.0
1951	356.8	140.9	387	120.8	92.2	116.6
1952	385.7	150.9	379	118.3	101.8	127.6
1953	384.6	151.8	385	121.7	99.9	124.7
1954	381.2	151.8	371	115.8	102.7	131.1
1955	—	159.4	—	110.0	—	144.9
1956	—	162.6	—	120.8	—	134.6
1957	—	170.2	—	127.5	—	133.5
1958	—	167.4	—	133.3	—	125.6
1959	—	172.5	—	139.2	—	123.9

It was, therefore, not until 1952 that the real wages of industrial workers were brought up to the pre-war level. In 1946 and 1947 the real wages were

quite low, being only 73.2 and 78.4 as compared to 100 of 1939. As the war-time restraints on the agitational approach could not continue after the war, workers naturally started using the weapon of strike quite freely. The result was that the number of man-days lost through strikes and lock-outs soared up to 12,717,762 in 1946 and to 16,562,666 in 1947 from the war-time low-level record of 2,342,287 in 1943. The strikes and the subsequent proceedings before tribunals and other authorities were in the hands of trade unions. The number of trade unions and trade union membership were almost doubled between 1946 and 1948.

New Central Organizations: As will be seen from the sections dealing with the central organizations of labour, three new central organizations arose soon after Independence, namely, the Indian National Trade Union Congress in May 1947, the Hind Mazdoor Sabha in December 1948, and the United Trade Union Congress in April 1949. The Indian Federation of Labour, which was born out of the throes of the war and was identified with the unsympathetic ruling circles, died an unlamented death soon after the war and made a pretence of merging itself in the Hind Mazdoor Sabha. The avowed object of each of the new central organizations of labour was to reach a position of power and pre-eminence by all possible means and as splits and membership-stealing would not carry them beyond a certain point, they had necessarily to rope in workers who had not as yet been unionized. Thus it was that there was a sudden stampede for conquering hitherto neglected fields, such as mines, plantations, etc. The new central organizations of labour developed close affinities with the more important political parties, the Indian National Trade Union Congress with the Congress Party, the All India Trade Union Congress with the Communist Party, the Hind Mazdoor Sabha with the Socialist Party, and the United Trade Union Congress with the Radicals. This identification of economic with political interests gave considerable assistance in the matter of unionization even if it produced other undesirable consequences.

Growth through Government's Labour Policy: The labour policy of Government since the passing of the Industrial Disputes Act, 1947, was one that inevitably, though unintentionally, encouraged litigation. Compulsory adjudication became the sheet-anchor of that policy, and as will be shown later on the number of adjudications before industrial tribunals, the number of appeals before the Labour Appellate Tribunal (when that authority was in existence), and the number of writs and appeals going to High Courts and the Supreme Court have steadily and alarmingly increased during the last 18 years or so. The raising of an industrial dispute, the persuading of Government to refer it to adjudication, the conduct of the proceedings before the tribunal and other authorities and, what is even more difficult, the implementation and enforcement of the award are arduous tasks which cannot be shouldered by anybody except a trade union guided by an energetic

and resourceful office-bearer. The challenge has been met by the arrival on the scene of a number of persons willing and eager to lead the workers through the intricate maze of tribunals, courts and recovery officers. Most of them are, of course, "outsiders". Of these, some are undoubtedly genuine workers, eager to build up a strong trade union movement, but unfortunately this cannot be said of all or even the majority of them. A number of unscrupulous persons have found the trade union field of Independent India, thickly strewn with adjudications and court proceedings, a happy hunting-ground for their personal ambitions and prosperity. They sponge on the workers on every conceivable opportunity—particularly when large sums of money are given out either as bonus or as arrears of payments ordered by tribunals. While trade unions continue to be poor, a number of trade union leaders have come into very affluent circumstances. Trade union leaders cannot function unless they have trade unions and supporting memberships to control and lead. Where trade union leaders work "honorarily" but hope to make good out of the lump payments secured for workers, regular collection of membership fees is not very important. On the other hand such collection, even if moderate, might drive workers into the hands of a leader who is prepared to welcome them without any fees. The labour policy of Government which rests on compulsory adjudication generates both a steadily-increasing volume of litigation and an equally growing number of labour leaders to raise and sustain such litigation. The "obtaining" of an adjudication by workers or the "grant" of an adjudication by Government—as many labour leaders and ministers choose to style their functioning—depends on the energy and powers of pressure or persuasion of the labour leader. Compulsory adjudication has opened up a vast vista of opportunities for the professional labour leader.

Growth of the Spirit of Trade Unionism: With the changed political atmosphere in the country and the growth of such ideas as democracy, socialism, right to a living wage, levelling up of inequalities, the building up of a welfare state, and so on, there is no doubt that a steadily increasing number of workers, particularly in the large metropolitan centres, have begun to realize that trade union organization is very essential for the protection and advancement of the working classes. But this realization alone cannot account for the vast quantitative expansion that has taken place in the movement. The more important factors that have led to this development are undoubtedly those mentioned earlier. Nevertheless, unless the soil is fertile and receptive, no seed can germinate, and all the efforts of trade union leaders would be in vain if the rank and file were wholly unreceptive and apathetic.

The expansion that has taken place in the trade union movement since Independence has been referred to above as "quantitative." It will be shown in the chapter dealing with the present state of trade unionism in the country

how qualitatively there is not much that the movement can boast of. Scrutiny of the fee-paying membership by standards which are by no means stiff has shown how memberships claimed are invariably several times those eventually proved. It will also be shown how the number of small and ineffective unions has steadily increased, much to the weakening of the movement. Small and weak unions cannot convince or compel an employer; nor can they sustain a strike for any length of time when direct action becomes necessary. They might at best make a token demonstration and eventually reconcile themselves to what is forced on them by employers. That is why 35 per cent of work stoppages collapse on the first day and another 29 per cent during the next four days. Only 26 per cent of work stoppages turn out to be successful in producing the desired results and another 13 per cent are partially successful. Thus almost two-thirds of the total number of strikes and lock-outs collapse unsuccessfully or produce indefinite and unsatisfactory results.

There are at present four central organizations of labour to which are affiliated unions of workers from many industries and employments. They are the All India Trade Union Congress (A.I.T.U.C.), the Indian National Trade Union Congress (I.N.T.U.C.), the Hind Mazdoor Sabha (H.M.S.) and the United Trade Union Congress (U.T.U.C.). The last one has declined considerably and almost disappeared after the death of its founder President, Mrinal Kanti Bose. It would, however, be necessary for us to deal with that organization both for historical reasons and because of the fact that there are still a few important unions, mostly in the docks and ports, claiming allegiance to it.

Besides these central organizations, there are a number of important federations of unions of workers belonging to the same industry or employment. Among these may be mentioned the two federations of railway labour, namely, the All India Railwaymen's Federation and the Indian National Railwaymen's Federation, the National Federation of Posts and Telegraph Workers, the All India Defence Employees' Federation, the All India Bank Employees' Union, the All India Port and Dock Workers' Federation, the All India Cantonment Board Employees' Federation, the Indian Working Journalists' Federation, and the All India Insurance Employees' Federation. Some of these federations are independent of the central organizations of labour but others are not. The Indian National Trade Union Congress itself has organized over a dozen federations, but they are all affiliated to the Indian National Trade Union Congress and constitute only an arrangement for enabling the Indian National Trade Union Congress to tackle the problems of an industry collectively. While certain aspects of the functioning of such federations will be considered in the chapter dealing with the present state of trade unionism in the country, the present chapter will be confined to the four central organizations of labour.

All India Trade Union Congress: On the termination of the First World

War labour unrest became very acute in India. Labour had accumulated many grievances during the war and was now determined to seek remedies for the ills it had so long patiently borne. In the absence of effective arrangements for mutual discussion and settlement, labour's only weapon was strike, and this it indulged in freely during the period 1919 to 1921. In 1920 there were 200 strikes and in 1921, 396. More or less the first shot in the struggle was fired by the textile workers at Ahmedabad in 1918, and when they came out successful, there was nothing to stem the tide of industrial unrest elsewhere. During this period the Indian National Congress stepped up its political agitation and resorted to non-cooperation with Government. The Congress realized that unless workers organized themselves properly into strong and permanent associations, they would not be able to make their combined weight felt against employers. At its thirty-fifth session held in Amritsar in 1919 the Congress passed a resolution urging its provincial committees and other affiliated associations to promote labour unions throughout the country. At its next session held in Nagpur in 1920 the Congress again passed a resolution expressing its opinion "that Indian labour should be organized with a view to improve and promote their well-being and secure to them their just rights and also to prevent the exploitation (*i*) of Indian labour, (*ii*) of Indian resources by foreign agencies; and that the All India Congress Committee should appoint a committee to take effective steps in that behalf." In accordance with this directive, the All India Congress Committee appointed a committee consisting of C. R. Das, Lajpat Rai, Anasuya Sarabhai, Gangadharrao Deshpande and others "to carry out the labour organization work according to the Congress resolution." Soon thereafter, in April 1922, the Working Committee of the Congress passed a resolution in which it said that "in order to make the Congress organization more democratic and representative, special efforts should be made by Congress workers to enrol a large number of members from the depressed and working classes on the Congress register." Thus two birds were sought to be killed in one shot, viz., improvement of the social and economic condition of the working classes and the strengthening of the Congress for political purposes by the organization of labour.

The economic distress of the workers arising out of the war and the increased interest taken in the working classes by the best-organized political party of the country led to the formation of scores of unions in the quinquennium 1919-23. In the absence of coordination of their activities, there was much wasted effort. Employers too were organizing themselves to meet the new challenge. The result was that there were many early casualties among the new unions. Though the committee appointed by the All India Congress Committee carried on organizational work, it was felt that a central organization—an apex body—was necessary to give direction and content to the labour movement. As the National Congress itself could not fill this role,

concerned as it was with the whole of the country and not with any particular section of the people, some other body had to be created to take charge of labour matters and yet to be in close liaison with the Congress.

It was at about this time that "a comparatively trifling incident", as Chaman Lall later on described it, occurred. The trifling incident was the nomination by the Government of India of a workers' representative to the panel of the Commission of Enquiry under the International Labour Organization. The Government of India nominated N. M. Joshi for this purpose. The workers of Bombay were not prepared to allow the Government to make such nominations without consulting labour. At a meeting of Bombay workers held at Parel on 10 July 1920 the following resolution[1] was passed:

"That this meeting of the organized workers of Bombay and the delegates present protests against the unconstitutional nomination by the Government of India of a representative of the workers of India to the International Labour Conference and the Commission of Enquiry in direct contravention of Articles 389 and 412 of the League of Nations Covenant and asserts the distinct rights of the workers to elect their own representatives and advisers. In pursuance of the right given to workers, this meeting urges the Government of India to withdraw the nomination of Mr. N. M. Joshi and send in his stead a duly elected representative of the organized workers of India. That this meeting resolves to hold an All India Trade Union Congress in Bombay and elects Lala Lajpat Rai as the first President."

And so it came about that the first session of the All India Trade Union Congress was held on 31 October 1920 in the Empire Theatre in Bombay under the presidentship of Lala Lajpat Rai. The Report of this session, at which Joseph Baptista was the Chairman of the Reception Committee and D. Chaman Lall, the General Secretary, said that the session was a "stupendous success" and went "beyond our wildest expectations." The session was attended by such front-rank political leaders as Motilal Nehru, M. A. Jinnah, Mrs. Annie Besant and Vithalbhai Patel and by Col. Wedgewood on behalf of the British Trades Union Congress. 801 delegates from all over India attended. At the session, 64 unions with a membership of 1,40,854 affiliated themselves with the All India Trade Union Congress while 43 other unions expressed their sympathy and support without formally affiliating themselves with the new organization. The Report of the session claimed that the All India Trade Union Congress represented "no less than 500,000 workers", but this was an obvious exaggeration, no doubt attributable to the mounting fever of enthusiasm of the organizers, as that figure included two lakhs of miners supposed to be represented by Swami Vishwanand and the strength of the sympathizing unions.

The speeches made at the Conference make interesting reading. Joseph Baptista, Chairman of the Reception Committee, said that the chief business

[1] A.I.T.U.C.: *Report of the First Session*, Bombay, 1920.

of the Congress "will be to sow the seed, which like the proverbial mustard, will germinate and grow into the mighty tree of the Federation of Labour in India." According to him, though capitalists had ceased buying slaves, they were still buying labour according to "the eternal and infernal law of demand and supply", and until this idea of buying, which was the root cause of the evil, was "eradicated and supplanted by the higher ideas of partnership, the well-being of the workers will never be secured. They are partners and co-workers and not buyers and sellers of labour." On the question of "outsiders", he agreed that officials of any labour union ought to be recruited from workers' own class but that in the absence of primary education of workers and in view of victimization, this was "a counsel of perfection outside the pale of practical politics." He then referred to the approach of Government and of employers to industrial strife, which was not to settle a dispute but to break the strike, and added that they were assisted in this by Anglo-Indian papers "with all the skill of strike-breakers, with all the venom of serpents, and with all the lies in creation." He pleaded for profit-sharing and the allocation of all profits above 9 per cent on capital to labour "as the simplest and best method" for securing to the labourer the full fruits of his labour.

Lala Lajpat Rai said in his presidential address that history recorded "no instance of an assemblage that was convened solely to consider the interests and welfare of workers not of this city or that, nor of this province or that, but of Bharat Varsha as a whole." He said that organized capital had had its way for the last 150 years, that militarism and imperialism were the twin children of capitalism, that "they are one in three and three in one", that their shadow, fruit and bark were all poisonous, that it was only lately that an antidote had been discovered and that that antidote was organized labour. He went on to say that workers in India had been slow to find and apply that antidote but that they were now joining hands and brains "not only to solidify the interests of Indian labour but to forge a link in the chain of international brotherhood." He refuted the suggestion that the formation of the All India Trade Union Congress was premature. In his opinion Indian labour was even more disciplined and self-controlled than the corresponding ranks of labour in Great Britain, U.S.A., France or Germany and, as an instance, referred to the completely peaceful strike of 50,000 railwaymen in Lahore for seven weeks. Outsiders, he said, would be required for some time to help and guide the movement, but he hoped that labour would find its leaders from among its own ranks in due course.

B. P. Wadia, the Madras labour leader, said that the formation of the Trade Union Congress was the most important event in the modern political life of India. N. M. Joshi considered it unfortunate that the labour movement had to be led, for the time being, by men who were not themselves workers but felt that "there was no help to it situated as they were at present."

Colonel Wedgewood, the fraternal delegate from the British Trades Union Congress, gave a few practical hints to those assembled there. He said:

"The first thing which those who wanted to help labour should do was to put an end to the wild and unorganized strikes and to create labour unions. They must get their trades unions fixed up and they must get their leaders to understand the work of the trades unions so that they might be able to argue properly while standing with the employers at the round table. They must have their unions first, and then they could win either by negotiation or by downing tools. Otherwise a wild and unorganized strike was apt to fail and bring down the whole movement, because if a strike failed at one place, it would cause failure at other places also."

While Colonel Wedgewood talked of the practical requirements of trade union organization and the big political leaders, who dominated the scene, indulged in flights of rhetoric and fancy, there were equally distinguished persons who wondered whether it was not premature to impose an all-India organization on unions which had yet to make good. It was, they argued, like lowering a heavy superstructure on weak and uncertain foundations. The foundations would never be set right if the superstructure sat on them too tightly or heavily. Mahatma Gandhi was against the precipitate formation of an all-India organization. He said: "I know how little we have been able to accomplish in the way of organization at Ahmedabad where I have directed the Textile Labour Union for many years. Even then we are not yet ready to join an all-India organization and yet we are one of the most advanced trade unions in the country." Rev. C. F. Andrews, quoting this opinion of Mahatma Gandhi said later on: "When the All India Trade Union Congress began more than four years ago, I held aloof though I had been very deeply interested in trade unionism all my life: yet at that particular time Mahatma Gandhi convinced me that the hour had not yet come for an All India Trade Union Congress. Therefore, when the movement began, I did not go down to Bombay to take part in it." We shall consider in due course whether the organization of the All India Trade Union Congress was, in fact, premature and whether this can be said to have affected the orderly growth of trade unionism in any way.

Soon after the first session, a draft of the constitution of the All India Trade Union Congress was prepared and circulated. It was adopted at a meeting of the Standing Committee of the Congress held on 15 June 1921.

Constitution of the All India Trade Union Congress: The constitution of the All India Trade Union Congress, as it stands today, describes the objects of the All India Trade Union Congress as:

"(*a*) to establish a socialist state in India;
(*b*) to socialize and nationalize the means of production, distribution and exchange as far as possible;
(*c*) to ameliorate the economic and social conditions of the working class;

(*d*) to watch, promote, safeguard and further the interests, rights and privileges of the workers in all matters relating to their employment;

(*e*) to secure and maintain for the workers:

(*i*) the freedom of speech;
(*ii*) the freedom of press;
(*iii*) the freedom of association;
(*iv*) the freedom of assembly;
(*v*) the right to strike; and
(*vi*) the right to work or maintenance;

(*f*) to coordinate the activities of the labour unions affiliated to the All India Trade Union Congress; and

(*g*) to abolish political or economic advantage based on caste, creed, community, race or religion."

The All India Trade Union Congress consists of:

(*i*) the affiliated unions;
(*ii*) the delegates assembled at the General or Special session;
(*iii*) the General Council including the office-bearers;
(*iv*) the Working Committee of the General Council; and
(*v*) the provincial bodies.

The General Council consists of the president, seven vice-presidents, the general secretary, the treasurer, not more than five secretaries and members elected by the All India Trade Union Congress on the basis of the total affiliated membership of unions in each state, roughly at the rate of one representative for every 5,000 members or part thereof. The Working Committee consists of all office-bearers of the All India Trade Union Congress as *exofficio* members and 35 members elected by the General Council by a system of cumulative voting.

The General Session of the All India Trade Union Congress meets once in two years, the General Council once a year, and the Working Committee at least twice a year.

Among the conditions of affiliation of unions to the All India Trade Union Congress are that the union shall send with the application a copy of the statement of accounts for the official year, giving an average paying membership for the period, duly audited by a qualified auditor, that the minimum fee which a union desiring affiliation shall charge the members shall not be less than one rupee per year, and that it shall pay certain annual contributions, a delegation fee, and special levies. The annual contributions consist of (*a*) a membership fee, (*b*) a W.F.T.U. levy, and (*c*) an annual subscription for *Trade Union Record*, the official journal of the organization. The annual membership fee is Rs. 10 for unions with a membership not exceeding 250,

Rs. 15 for unions with a membership from 251 to 500, Rs. 20 for unions with a membership from 501 to 1000 and at the rate of two paise per member for unions with a membership above 1000. The W.F.T.U. levy is at the rate of Rs. 5 per 1000 members subject to a minimum of Rs. 2.50. Non-payment of any contribution or levy that has become due disqualifies the defaulting union from voting at, or participating in, the meetings of the All India Trade Union Congress.

For the General or a Special Session of the All India Trade Union Congress the affiliated unions elect delegates at the rate of one delegate for each union having a membership of 200 or less and one additional delegate for every complete set of 200 members, and a further delegate for the last fraction of 200 if that fraction consists of 100 or more members.

The General Council has full authority to take all proper steps to carry out the work of the All India Trade Union Congress in accordance with the Constitution. The Working Committee takes steps to carry out the resolutions passed at the previous session of the All India Trade Union Congress and deals with any emergency that arises during the year, besides generally advancing and furthering the aims and objects of the All India Trade Union Congress.

A Political Committee of seven members may be set up by the Working Committee for building up political funds, organizing elections to local bodies and legislature, keeping watch over taxation proposals, initiating legislation and doing other political propaganda.

All affiliated unions situated in a 'Provincial Administrative Unit' join together to form the Provincial Trade Union Congress Committee.

The Provincial Committee and the individual unions have power to manage their affairs according to their own rules, subject to the provisions of the Constitution.

Progress of the All India Trade Union Congress: The All India Trade Union Congress has held annual or biennial sessions fairly regularly ever since its inception. Even the earlier sessions of the All India Trade Union Congress were characterized by the making of political demands mixed freely with economic demands. Declarations that the time had come for the attainment of Swaraj (self-rule), that the working classes should not take part in any future war, that adult suffrage should be the basis of elections to the Central and Provincial legislatures, etc., were often made at the annual sessions. Soon after the formation of the All India Trade Union Congress, the Indian National Congress passed at its Gaya Session in 1922 a resolution welcoming the formation of the All India Trade Union Congress and appointing a committee consisting of C. F. Andrews, J. M. Sen Gupta, S. N. Haldar, Swami Dinanath, D. D. Sathaye, and M. Singaravelu Chettiar to assist the Executive Council of the All India Trade Union Congress in the organization of Indian labour, both agricultural and industrial. The top leaders of the Indian National Congress took active interest in the affairs

of the All India Trade Union Congress and freely became presidents and secretaries of the latter. Among the leaders elected to the presidentship in future years were C. R. Das, Pandit Jawaharlal Nehru, Subhas Chandra Bose, and V. V. Giri.

While the Indian National Congress took an abiding interest in the All India Trade Union Congress right from the beginning and provided patronage and support to the new organization in return for an ample membership of unionized workers in the National Congress, the communists soon discovered in the new organization a potent weapon for spreading their ideas and ideologies. An All India Congress Committee publication[2] says:

> "The Communist leaders were good propagandists who often strung together all kinds of impossible and preposterous demands in the hope that by doing so they would transport Indian industrial labour at once into an Arcadia. Congress leaders, on the other hand, believed in taking all possible steps to educate the worker in their rights and training them to acquire sufficient strength before they had occasion to fight for them when denied, etc."

According to the Indian National Congress, the idea of class war and other doctrines imported from abroad were served by the communists to workers "in attractive forms in those highly emotional days of the Bombay cotton textile strike and oil strike in the year 1928 and that this was responsible for rioting in Bombay city on a scale previously unknown." This led to the arrest of the ring leaders and their trial on charges of organized conspiracy at Meerut in 1929.

The communist version of these incidents is somewhat different. According to the official history[3] of the All India Trade Union Congress published by the present communist leaders: "the growth of the trade unions throughout India, the firm struggles waged by the workers and also the stable organizations which by then came into existence met with increasing hostility on the part of the Government. Hence in order to terrorize the movement the Government staged the Kanpur conspiracy case." The anti-rationalization strike of Bombay textile workers, according to the All India Trade Union Congress, brought new features into the trade union movement and resulted in the emergence of a working class left leadership as distinct from the leadership till then of the 'national bourgeoisie.' "Afraid of the growing strength of the working class," says the communist history, "the Government hurled its entire repressive machinery against it. In 1928 the Trade Disputes Bill was introduced in the Central Assembly aimed at declaring strikes illegal." Later on "with a view to smash the working class organization and to curb

[2] A.I.C.C.: *Congress and Labour Movement in India*, p. 21.
[3] A.I.T.U.C.: *An Outline of the History of the A.I.T.U.C.*, p. 5.

the increasing political consciousness of the workers, the Government in March 1929 arrested some of the top leaders of the working class movement and the All India Trade Union Congress in the frame-up known as the Meerut Conspiracy Case."

What is of interest here from the purely trade union point of view is that both the National Congress and the communists started bending the All India Trade Union Congress to their own political purposes. If the National Congress wanted[4] "to keep the labour class within the Congress-fold so as to enable them to join with other classes in their struggle to take the country to its political goal", the communists had other ideas[5] regarding the role of labour in regard to its "demarcating itself from the national bourgeoisie" and in regard to the achievement of a "Socialist Republican Government of the working class." Neither party was prepared to allow the prematurely organized All India Trade Union Congress to concentrate on its primary objective of creating and consolidating a sound trade union movement.

By 1929 the All India Trade Union Congress was a loosely-held organization of various groups such as the communists, the old right-wingers, the reformists under N. M. Joshi, etc. The tenth Session of the All India Trade Union Congress was held at Nagpur on 28 November 1929 with Pandit Jawaharlal Nehru as President. Meanwhile the two powerful communist unions, viz., the Bombay Girni Kamgar Union and the G.I.P. Railway Workers' Union, had been affiliated with the All India Trade Union Congress. With their support, the communists secured a majority voting strength in the All India Trade Union Congress. The communists were, therefore, able to capture both the General Council and the Executive Committee of the All India Trade Union Congress. The Executive Committee passed resolutions, continuing its affiliation with such external communist organizations as the Pan-Pacific Trade Union Secretariat and the League against Imperialism and boycotting the Royal Commission on Labour in India and the International Labour Organization. The resolutions also declared the belief of the All India Trade Union Congress in complete political and economic independence from British Imperialism and native feudal allies, in the abolition of capitalism and in the establishment of a workers' republic. All resolutions except the one on affiliation with the Pan-Pacific Trade Union Secretariat, which was postponed for a year, were passed in the open session of the Congress. After the resolutions were passed, the representatives of 23 unions and a number of permanent delegates including N. M. Joshi, Chaman Lall, V. V. Giri, B. Shiva Rao, S. C. Joshi, Mrinal Kanti Bose, Bakhale, and Naidu seceded from the All India Trade Union Congress and explained their action in a letter addressed to the President:

[4] A.I.C.C.: *Congress and the Labour Movement*, p. 18.

[5] A.I.T.U.C.: *An Outline of the History of the A.I.T.U.C.*, p. 6.

"The proceedings of the Executive Council of the All-India Trade Union Congress have revealed beyond doubt the fact that the majority of its members are determined to commit the Congress to a policy with which we are in complete disagreement. The point of view of the majority is clearly indicated in the resolution for the boycott of the Whitley Commission, the affiliation of the Congress to the League against Imperialism and to the Pan-Pacific Trade Union Secretariat, the rejection of the proposal to hold the Asiatic Labour Congress, the refusal to send delegations on behalf of the Indian workers to the future Sessions of the International Labour Office at Geneva, the recognition of the Workers' Welfare League, the rejection of the offer from His Majesty's Government of a round table conference and the condemnation of the Nehru Report. In our opinion, the adoption of these resolutions can have no other meaning than that the policy of the All India Trade Union Congress, under the control and direction of the new majority in the Executive Council, will be fundamentally opposed to the genuine interests of the working classes.... We have to dissociate ourselves completely from the resolutions of the Executive Council and we further feel that no useful purpose will be served by continuing our participation in the proceedings of the Congress."

The seceders met on 1 December 1929 under the presidentship of Diwan Chaman Lall and decided to form a strong central organization called the Indian Trades Union Federation. The Federation passed resolutions offering cooperation with the Royal Commission on Labour and the proposed Round Table Conference. A provisional committee under the Chairmanship of V. V. Giri was set up for the purpose of calling a convention in three months. It was also decided that the proposed constitution of the new organization "should contain a clause excluding unions and men with communist tendencies, from being affiliated to or represented in the Federation." The Federation got itself affiliated to the International Federation of Trade Unions.

There was a second split in the All India Trade Union Congress at its eleventh session held in Calcutta in July 1931. The session was presided over by Subhas Chandra Bose. The split arose over a dispute as to who were the real representatives of the Girni Kamgar Union. S. V. Deshpande, General Secretary of the All India Trade Union Congress, and G. L. Khandalkar, Vice-President of the All India Trade Union Congress, were the rival claimants. The credentials committee of the Executive Council gave its verdict in favour of Khandalkar and thereupon Deshpande's supporters staged a demonstration and compelled the President to adjourn the meetings of both the Executive Council and the open session. The open session was later on held on 7 July 1931 at Calcutta under the presidentship of Subhas Chandra Bose. Subhas Chandra Bose said in his presidential speech that they should not surrender themselves to the dictates of either Moscow or

Amsterdam. He welcomed the Fundamental Rights Resolution passed at the Karachi session of the Indian National Congress and spoke appreciatively of the Report of the Royal Commission on Labour. About 30 resolutions were passed condemning the retrenchment policy of Government, congratulating Soviet Russia on its attempt to uplift the condition of workers, urging the release of the Meerut Conspiracy case prisoners, demanding unconditional transfer of power to the people, suggesting the nationalization of land, public utilities, mineral resources and banks, and supporting the repudiation of debts contracted by the foreign Government and fixation of a minimum wage of Rs. 40 for unskilled workers and Rs. 50 for skilled workers. R. S. Ruikar, Mukundlal Sircar and Subhas Chandra Bose were elected President, General Secretary and Treasurer respectively for the following year.

Meanwhile S. V. Deshpande and his companions broke away from the All India Trade Union Congress and meeting on 6 July 1931 formed, with the support of 12 unions, a separate central body called the Red Trade Union Congress with D. B. Kulkarni as President and S. V. Deshpande, Bankim Mukerjee and S. G. Sardesai as Secretaries.

Thus the two splits produced three rival central organizations of labour and greatly weakened the trade union movement. Thus almost within a decade of its establishment, the central organization of labour became a prey to political machinations and personal ambitions.

Split and Move for Unity: In May 1931 the All India Railwaymen's Federation took the lead for bringing about unity in the ranks of labour. V. V. Giri and Jamnadas Mehta were members of the 'Platform of Unity'. Certain proposals were made by this committee, but they were rejected by the All India Trade Union Congress at its twelfth session held in September 1932. On the failure of these proposals for unity, a number of railway unions formed themselves into a new central body called the National Federation of Labour with a provisional committee consisting of Jamnadas Mehta, V. V. Giri, Guruswamy and others. In April 1933, at a special session in Calcutta, the Indian Trades Union Federation and the National Federation of Labour joined together and formed the National Trade Union Federation. This Federation decided to affiliate itself with the International Federation of Trade Unions.

The National Trade Union Federation also suffered a split. An important constituent union called the Mariners' Union quarrelled with the Federation over the application of a new union and seceded from it to form yet another central organization called the All India Trade Union Federation. This Federation made no headway and soon faded out of existence.

In March 1935 two representatives of the All India Trade Union Congress, viz., Harihamath Shastry and R. S. Ruikar, met N. M. Joshi, V. V. Giri and B. Shiva Rao of the National Trade Union Federation to discuss the

question of unity. They drew up a statement recommending the setting up of a joint committee composed of 10 representatives of each of the two organizations for drafting proposals for common action by the two organizations even if complete unity was not possible. The two main obstacles to unity had been the question of participation in the International Labour Conferences and that of affiliation with the International Trade Union Federations. Compromise over the first question seemed well-nigh impossible.

At the fourteenth session of the All India Trade Union Congress presided over by Hariharnath Shastry at Calcutta in April 1933, the representatives of the Red Trade Union Congress, who had been invited, attended and agreed to merge their organization in the parent organization.

In April 1938 a joint session of the All India Trade Union Congress and the National Trade Union Federation was held under the presidentship of Dr. Suresh Chandra Banerjee. The proposals for unity drawn up at the joint session included the following: (*i*) that the National Trade Union Federation as a unit be affiliated with the All India Trade Union Congress, (*ii*) that the All India Trade Union Congress accept the constitution of the Federation, (*iii*) that the affiliation of the Federation with the All India Trade Union Congress remain in force for one year, (*iv*) that the All India Trade Union Congress be not affiliated with any foreign organization, though individual unions were free to do so, and (*v*) that all political questions and the question of strikes be decided by a three-fourths majority of the General Council or Working Committee. These proposals were considered at the eighteenth session of the All India Trade Union Congress held in Bombay in September 1940 under the presidentship of Suresh Chandra Banerjee. The National Trade Union Federation agreed to merge itself in the All India Trade Union Congress. All assets and liabilities were pooled and the strengthened All India Trade Union Congress claimed as its constituents 195 unions with a total membership of 3,74,256. Thus was unity achieved after years of attempted reconciliation, but only to be broken up again by the situations created by the Second World War.

It is somewhat intriguing how widely estimates of membership made in responsible quarters often vary. According to the estimates[6] of the Indian National Congress agencies, at the end of the year 1937 the National Trade Union Federation had a membership of 83,000 with 62 affiliated unions and the All India Trade Union Congress a membership of 46,000 with 98 affiliated unions, making in all a membership of 1,29,000 between the two organizations. The history of the All India Trade Union Congress, however, estimates that early in 1938, with the affiliation of a membership of 1,51,336 of the National Trade Union Federation the All India Trade Union Congress had a membership of 3,66,456 with 188 affiliated unions. The figures estimated by the Indian National Congress represented only 6.3 per cent of the total

[6] A.I.C.C.: *Congress and the Labour Movement in India*, p. 25.

number of 2,043,522 workers in factories and mines and, according to that organization, would show "that the actual workers were not being drawn into the trade union movement. The history of the trade union movement in the country in the thirties was the history not of workers but of their leaders fighting against one another." That this assessment should have been put forward on behalf of a premier political organization which had striven hard for unity in labour ranks is indeed a sad commentary on the way the trade union movement was subverted to personal and political ambitions.

Towards the end of 1941 the Indian Seamen's Union disaffiliated itself from the All India Trade Union Congress as it was in disagreement with the 1940 resolution against participation in the war. M. N. Roy, V. B. Karnik, Maniben Kara, and others also resigned from the All India Trade Union Congress and started the Indian Federation of Labour. The Federation had the active support of Government because of its support to the war effort, and it started organizing rival unions wherever it could with Government support.

The 19th session of the All India Trade Union Congress held at Kanpur in February 1942 served only to increase the confusion in which the Congress found itself regarding its attitude to the war. There were two resolutions before the session on that subject—one moved by Bankim Mukherjee advocating unconditional support to the war and the other moved by Mrinal Kanti Bose recommending immediate transfer of power to enable Indian workers to take part enthusiastically in the war effort. Neither resolution got the required three-fourths majority and no resolution was adopted at the session regarding the attitude of the All India Trade Union Congress towards the war.

The 20th session of the All India Trade Union Congress was held at Nagpur in May 1943 under serious difficulties because of the Government ban on allowing visitors and holding mass meetings. In the absence of the President, V. V. Giri, Charu Chandra Banerjee presided over the session. Again there were two political resolutions. The resolution of Somnath Lahiri suggested acceptance of the principle of self-determination in order to dispel the doubts and suspicions of the Muslims, while the other one of Kalappa suggested that the political parties should devise sanctions in order to enforce national demands. Neither of these resolutions secured the requisite three-fourths majority.

The 21st session of the A.I.T.U.C. was held in Madras in January 1945. A resolution moved by Giri emphasizing the demand for the attainment of national freedom was unanimously accepted.

In February 1945 the World Trade Union Conference was held in London to discuss the attitude of trade unions towards peace settlements, representation of trade unions at the peace conference and the immediate trade union demands for the post-war period and to form the World Federation of Trade Unions (W.F.T.U.). The A.I.T.U.C. was represented at the Conference by S. A. Dange, R A. Khedgiker and Sudhindra Pramanik. The A.I.T.U.C. got itself affiliated with the W.F.T.U.

The 22nd session of the A.I.T.U.C. was not held till February 1947. Meanwhile the country was passing through a series of upheavals. These naturally affected the working classes also. To the excitement afforded by a continuous succession of political events was added the misery caused by the deteriorating economic situation characterized by high prices and soaring inflation. No wonder workers went into a strike offensive. The strike of posts and telegraph workers affected the entire country. The railway workers threatened to follow suit if their demand for the setting up of a Pay Commission was not accepted. These excitements increased the affiliated membership of the A.I.T.U.C. to 7,96,194 with 601 unions.

It was at this juncture, in May 1947, that the Indian National Trade Union Congress was formed at the active instance of the senior leaders of the Indian National Congress. Of this new central organization, the General Secretary of the A.I.T.U.C., N. M. Joshi, said:

"The newly formed organization is really an adjunct of the Indian National Congress and is in no sense a non-party or non-political labour organization as the A.I.T.U.C. is, and may not be able to represent the working class. Communists have today a majority in the A.I.T.U.C., but all decisions taken by the A.I.T.U.C. are the decisions of the A.I.T.U.C. as a whole. The remedy for the present difficulty lies in sympathetic understanding and prompt redressal of grievances. Unfortunately, the bewildered Congress Ministers think that the easy way to get out of difficulty lies in dividing the ranks of labour. They will live and learn but in the meanwhile the mischief has been done."

Some time later the Socialists also broke away to form the Hind Mazdoor Sabha. Still later on, a group led by Mrinal Kanti Bose left the A.I.T.U.C. to form the United Trade Union Congress. The split was complete and the A.I.T.U.C. was thus left greatly weakened and as an almost completely communist organization. N. M. Joshi resigned from the Secretaryship of the A.I.T.U.C. as a result of a difference of opinion over an A.I.T.U.C. delegation.

After the 23rd Session held towards the end of 1949 the A.I.T.U.C. suffered a further set-back as a result of the action taken by the Government against the activities of individual communists. Many offices of the A.I.T.U.C. were sealed and important leaders arrested. The official history of the A.I.T.U.C. admits that "the dominant section of the leadership of the A.I.T.U.C. during this period fell a victim to the provocations and pursued adventurist tactics which also helped to weaken the A.I.T.U.C. Struggles were needed to expose the policies of the Congress but they had to be conducted cautiously with the least damage to the striking power and organization of the working class."

In view of these reverses, the 24th session of the A.I.T.U.C. was held in Calcutta some five years after the 23rd session held in Bombay in 1949. By then the intensity of the action against communists had been greatly

relaxed and the A.I.T.U.C. had regrouped its forces and started functioning almost normally. 830 delegates attended this session. The A.I.T.U.C. then gave out its membership as 6,55,940 with 937 unions.

The A.I.T.U.C. has since continued to grow steadily in strength and in numbers. At the 1957 general elections to the Parliament and State Assemblies, a number of A.I.T.U.C. leaders got themselves elected. The official history of the A.I.T.U.C. highlights the contest for the Parliamentary seat from Bombay City Central, where S. A. Dange, General Secretary of the A.I.T.U.C., was pitted against G. D. Ambekar, President of the Bombay branch of the Indian National Trade Union Congress. Dange's spectacular success with 3,23,526 votes against Ambekar's 1,87,241 votes was hailed by the A.I.T.U.C. as indicative of the preference of the working classes for the A.I.T.U.C. over the I.N.T.U.C. It is doubtful whether this claim is correct, because if the support had been to the organization rather than the individual, similar successes should have been scored elsewhere also. The great esteem in which Dange personally is held even in non-communist circles must undoubtedly have tilted the balance heavily in his favour.

The formation of the Communist Ministry in Kerala State gave an impetus to the expansion of the A.I.T.U.C. in that State. The 25th session of the A.I.T.U.C. was appropriately held in Kerala, at which the Labour Minister of Kerala took a spectacular pledge:

> "I would like to take a solemn pledge before this august gathering, which includes the working class from all States of India and also the representatives of the great trade union movement in foreign countries, that the Kerala Government will work tirelessly to implement the policies and resolutions adopted by the A.I.T.U.C."

As to how this pledge was carried out is now a matter of history. An assessment of the labour policy of the Communist Government must be postponed to its proper place. It is sufficient here to say that the industrial peace of the State was disturbed for many months prior to the removal of the Communist Ministry, starting with the violent strikes in the plantations. The relationship between unions of different ideologies suffered a great set-back. The A.I.T.U.C. and the I.N.T.U.C. were never more apart in Kerala than during the communist regime. They often found themselves working at cross purposes to the great embarrassment and annoyance of many employers. On a point of principle, it is open to question whether a Minister belonging to a political party should take a solemn pledge that he will tirelessly implement the policies and resolutions that may be adopted in future by some agency of his party. While it is obvious that the party in power will try to implement its basic policies and programmes, would it be proper for individual ministers to bind themselves down beforehand to every resolution that may be passed by a party agency?

Membership of the All India Trade Union Congress

In the early years of its existence, its claimed membership, as compiled from its annual reports, was as follows:

Year	*Number of affiliated unions*	*Membership of affiliated unions*
1920	64	1,40,854
1925	31	90,000
1926	52	1,25,000
1927	57	1,25,000
1928	42	98,600
1936	62	51,749
1938	96	1,33,654
1940	198	3,48,003
1942	218	3,10,940
1943	256	3,18,244
1944	306	3,35,964
1947	601	7,96,194

SOURCE : Punekar : *Trade Unions in India.*

According to figures officially compiled by the Labour Ministry of the Government of India, the figures of membership of the A.I.T.U.C. claimed and verified, ever since verification started in 1946 in connection with its trial of strength with the Indian Federation of Labour, are as follows:

Year	*Claimed*		*Verified*	
	Number of unions	*Membership*	*Number of unions*	*Membership*
1946	427	4.83.227	326	6,96,555
1948	874	10,80,886	683	8.74,319
1949		Returns not furnished.		
1950		7,20,910	—	3,70,304
1951-52	—	7,58,314	—	2,49,474
1952-53	784	6,75,377	334	2,10,914
1953-54		Returns not furnished.		
1954-55	1030	7,89,045	481	3,06,963
1955-56	1179	8,17,455	558	4,22,851
1956-57		Returns not furnished.		
1957-58	1409	14,00,141	807	5,37,567
1958-59	1338	10,82,572	—	—

The figures of membership of the A.I.T.U.C. before 1947 can be taken

only as approximations. In the annual reports for certain years, though the total number of affiliated unions was given, the details of membership of all the unions were not available with the result that compilers had to leave out the memberships of some unions.

The figures of membership claimed by the A.I.T.U.C. at various places in the *Outline of the History of the A.I.T.U.C.* are:

Year	*Number of Unions*	*Membership*
1920	64	1,40,854
1926	52	1,25,000
1927	59	1,25,000
1936	71	93,750
1938	98	1,22,050
"	188*	3,66,456
1940	195	3,74,256
1943	259	3,32,079
1945	—	4,51,915
1947	607	7,96,194
1954	937	6,55,940
1957	—	Over 14,00,000

* After affiliation of National Trade Union Federations.

In view of the fact that the A.I.T.U.C. has accepted verification of membership through official agencies, these figures lose all their importance.

During the last seven or eight years, the A.I.T.U.C. has, no doubt, been building afresh after its eclipse during the early fifties. At the General Council meeting of the A.I.T.U.C. held at Bangalore in January 1959, the General Secretary of the A.I.T.U.C. apparently felt confident enough to make the claim: "We have come to a position where we count not only the membership of our affiliated unions but the fact that we have become the gravitating centre of working class thinking on all major questions."

Indian National Trade Union Congress: The closing period of the Second World War was, as we have seen, one of acute economic distress for the working classes. The pent-up discontent of the war period burst forth in a series of large-scale strikes in the major industries. While this development should normally have closed the ranks in the trade union movement, there were ominous signs of an imminent split in the movement. Congressmen had come out of jails after long periods of incarceration, feeling bitter against communists who had actively cooperated with the Government ever since Russia's entry into the War on the side of the allies. Nationalist labour leaders also found, much to their annoyance, that communists had gained complete control over the All India Trade Union Congress and that they had started

fomenting strikes with a view to discrediting the newly-formed Congress Governments. From April to July 1946, i.e., in the first few months of Congress rule, there were as many as 690 work stoppages involving 928,312 workers. The Indian National Congress felt that a proper lead should be given to labour and asked one of its associate bodies, the Hindustan Mazdoor Sevak Sangh, to take over the work of organization of labour. At first the Sangh thought that this could be done by injecting sane elements into the All India Trade Union Congress and by reforming that body from within. It, therefore, passed a resolution on 17 November 1946 advising all unions of the Congress persuasion to affiliate themselves with the All India Trade Union Congress. This move was soon found to be valueless. The communists had a safe majority on both the Executive and General Councils of the All India Trade Union Congress and were, therefore, in a position to influence effectively the work and resolutions of the All India Trade Union Congress. Congressmen wondered how communists had managed to secure so much influence over these bodies when they had secured only 25 per cent of the total number of votes at the recent general elections as against 65 per cent of the votes polled by the Indian National Congress.

The clash between nationalist and communist ideologies in the working of the All India Trade Union Congress became open and irreconcilable with the passing of a comprehensive resolution on labour unrest by the Congress Working Committee on 13 August 1946. The relevant portions of the resolution are quoted below:

"The Working Committee view with deep concern the intense and widespread labour unrest which has in recent months involved numerous industries and services in the country in large-scale and prolonged stoppages, entailing heavy material loss and serious hardships to the community as well as the working class. The Committee are aware of the fact that the labour upheaval through which the country has been passing is largely occasioned by the serious privations to which the workers have been subjected in consequence of the tremendous economic maladjustments created by the war, especially the excessive rise in the cost of living that has remained uncompensated to a very large extent.... The Committee feel further that it is necessary in the general interest to point out that avoidable strikes cannot have the backing of public opinion, and in view of the dire need of the country for more goods and services, hasty or ill-conceived stoppages and the refusal to take advantage of the available means of settlement by negotiation, conciliation and arbitration, constitute a distinct disservice to the community and the working class itself.

The Committee in this connection emphasize that, in particular, industries and services which are essential for the existence of the community and on which the continuity of the public administration depends should be immune from dislocation by strikes and lock-outs and all disputes

between the employees and employers (including governments) should be finally settled by arbitration and adjudication.

The Committee understand that the undesirable features of the labour situation are due in part to the efforts of certain individuals and sections to exploit the ignorance of the workers and the need of the community for ulterior aims, political or others and this makes it all the more incumbent on Congressmen to develop further contacts with labour and serve its cause to the best of their ability, and to discriminate between occasions on which labour action deserves their support and those which call for restraint or dissuasion."

This resolution thus included the propositions that avoidable strikes should be discouraged, that public utility services should be immune from strikes and lock-outs, and that all disputes should be finally settled by arbitration and adjudication. On the other hand the All India Trade Union Congress had already passed a resolution at its last annual session held in Calcutta condemning the Industrial Relations Act of the Bombay Government and the Industrial Disputes Act of the Central Government on the ground that they provided for compulsory adjudication. The communists had launched a determined campaign against compulsory adjudication. Thus the approach of Congressmen to the problem of securing relief for workers and getting their industrial disputes settled was diametrically opposed to that of communists.

An equally strong reason which prevented Congressmen from collaborating with communists was the feeling that the latter had sabotaged the national struggle of 1942. As the All India Congress Committee report puts it: "Now, when the battle has been won and the country awaits reconstruction at the hands of the victors of the freedom struggle, those who sided with the opposite camp in the struggle seem to be still wanting to harass those who have taken up the administration of the country, by setting up unrest in the labour field."

Gulzarilal Nanda, Secretary of the Hindusthan Mazdoor Sangh, said: "This is a critical period in the history of the country. To dislocate the productive organization of the nation in these times is really to strike a direct blow at the life of the nation and its political integrity. It will not be easy to undo the economic damage or the political harm which the communist activity is causing from day to day if the mischief is not counteracted at once."

As no rapprochement between the Congress and the communists was possible in these circumstances, the Indian National Congress called upon the Hindustan Mazdoor Sevak Sangh to organize a new central organization of trade unions. Accordingly the Sangh called a conference of prominent trade union leaders at New Delhi on 3 and 4 May 1947. It was claimed[7]

[7] A.I.C.C.: *Congress and Labour Movement in India*, p. 155.

that more than 200 trade unions with a total membership of 5,75,000 were represented at the conference. Elsewhere[8] the same publication of the All India Congress Committee says that the Indian National Trade Union Congress formed in May 1947 secured, by June 1947, 35 unions affiliated with it representing a total membership of 1,57,000. The precise significance of these two figures of 5,75,000 and 1,57,000 is not very clear. Were the majority of the unions which attended the conference not in a position to affiliate themselves with the Indian National Trade Union Congress immediately? The inaugural conference was attended not only by trade union leaders such as Khandubhai Desai, Abid Ali, Hariharnath Shastri, R. A. Khedgikar, S. R. Vasavada, Shivnath Banerji, etc. but by the top leaders of the Indian National Congress like Pandit Jawaharlal Nehru, Acharya Kripalani, Jagjivan Ram, Harekrushna Mahtab, Asoka Mehta, Aruna Asaf Ali and others. Sardar Vallabhbhai Patel presided over the conference. In his presidential address Sardar Patel said that "it was no use trying to reform the All-India Trade Union Congress and capture it, because the communist unions put a bogus membership and do not hesitate to resort to unscrupulous methods." Gulzarilal Nanda, Secretary of the Sangh, said that "in the existing set-up of the All India Trade Union Congress, it was vain to expect fair-play... since it was not possible to join the race for multiplying bogus unions... and bloated returns of membership."

It was, of course, fair enough for the opponents of the official policy of the All India Trade Union Congress to secede and, if need be, to form an alternative organization of labour. If, however, the charge that the All India Trade Union Congress, the oldest central organization of labour, created and long nurtured by the top leaders of the Indian National Congress, had resorted to bogus memberships and dishonest returns is true, it is a sad commentary on the growth of trade unionism in the country. Even under the best of auspices and in spite of its being fathered by the topmost political and trade union leaders, the All India Trade Union Congress had not made good. A series of splits and dissensions had occurred, and the Working Committee's resolution of 13 August 1946 stated that the undesirable features of the labour situation which had developed were "due in part to the efforts of certain individuals and sections to exploit the ignorance of the workers and the need of the community for ulterior aims, political or others." The trade union movement, or at any rate vital sections of it including the All India Trade Union Congress itself, were in the hands of "outsiders." Could it be that the most powerful labour organization in the country had failed because of exploitation by some of these outsiders who were out to serve their own ulterior aims?

Thus the Indian National Trade Union Congress came into existence on 4 May 1947 with much fanfare and a substantial ready-made member-

[8] A.I.C.C.: *Congress and Labour Movement in India*, p. 36.

ship. Khandubhai Desai was appointed as the first General Secretary of the organization. A Provisional Executive Committee with Suresh Chandra Banerjee as President was elected. A committee of five was appointed for drafting the manifesto and the programme of the Indian National Trade Union Congress.

Constitution of the Indian National Trade Union Congress: The objects of the Indian National Trade Union Congress are:

I. (*i*) to establish an order of society which is free from hindrance in the way of an all-round development of its individual members, which fosters the growth of human personality in all its aspects, and goes to the utmost limit in progressively eliminating social, political or economic exploitation and inequality, the profit-motive in the economic activity and organisation of society and the anti-social concentration of power in any form;

(*ii*) to place industry under national ownership and control in suitable form in order to realise the aforesaid objective in the quickest time;

(*iii*) to organise society in such a manner as to ensure full employment and the best utilisation of its manpower and other resources;

(*iv*) to secure increasing association of the workers in the administration of industry and their full participation in its control;

(*v*) to promote generally the social, civic and political interest of the working class.

II. (*i*) to secure an effective and complete organisation of all categories of workers including agricultural labour;

(*ii*) to guide and coordinate the activities of the affiliated organisations;

(*iii*) to assist in the formation of trade unions;

(*iv*) to promote the organisation of workers of each industry on a nation-wide basis;

(*v*) to assist in the formation of Regional or Pradesh Branches or Federations.

III. (*i*) to secure speedy improvement of conditions of work and life and of the status of the workers in industry and society;

(*ii*) to obtain for the workers various measures of social security, including adequate provision in respect of accidents, maternity, sickness, old-age and unemployment;

(*iii*) to secure a living wage for every worker in normal employment and to bring about a progressive improvement in the workers' standard of living;

(*iv*) to regulate hours and other conditions of work in keeping with the requirements of the workers in the matter of health, recreation and cultural development;

(*v*) to secure suitable legislative enactments for ameliorating the conditions of the workers and to ensure the proper enforcement of legislation for the protection and uplift of labour.

IV. (*i*) to establish just industrial relations;
(*ii*) to secure redressal of grievances, without stoppages of work, by means of negotiation and conciliation and failing these by arbitration or adjudication;
(*iii*) to take recourse to other legitimate methods, including strikes or any suitable form of satyagraha where adjudication is not applied and settlement of disputes within a reasonable time by arbitration is not available for the redress of grievances;
(*iv*) to make necessary arrangements for the efficient conduct and satisfactory and speedy conclusion of authorized strikes or satyagraha.

V. (*i*) to foster the spirit of solidarity, service, brotherhood, cooperation and mutual help among the workers;
(*ii*) to develop in the workers a sense of responsibility towards industry and the community;
(*iii*) to raise the workers' standard of efficiency and discipline.

The Indian National Trade Union Congress consists of (*i*) the central organization, (*ii*) the affiliated unions, (*iii*) industrial federations, (*iv*) regional branches and councils functioning under the direct control and supervision of the central organization, (*v*) the Assembly of delegates, (*vi*) the General Council and (*vii*) the Working Committee and other committees.

Any organization of workers accepting the Constitution of the Indian National Trade Union Congress and with a subscription rate of not less than 25 paise per month is entitled to affiliation with the Congress provided that it is not affiliated with any rival organization or any of its Executive Committee members are not members of a rival union. The Indian National Trade Union Congress will not affiliate with it more than one organization belonging to the same industry, trade, business or calling in the same 'local area.' The affiliation of any organization whose affiliation fee or special levy remains in arrears for three months after the expiry of the time-limit prescribed will cease automatically. Such an organization can regain its affiliation only after paying all arrears and all fees and levies which would otherwise have become payable if the organization had not lost its affiliation together with a fine of Rs. 10.

Every affiliated organization is required to pay to the Congress an annual affiliation fee at the rate of ten paise per member on its roll subject to a minimum of Rs. 15. The members of an affiliated organization, including honorary members, are called primary members. The annual affiliation fee is payable within three months of the commencement of each financial year.

Every affiliated organization is also required, *inter alia*, (*i*) to extend

facilities for scrutiny of inspection by a person or persons authorized by the Working Committee of its accounts, registers and other documents and to supply such information as may be asked for by the Working Committee, (*ii*) to offer to submit to arbitration every industrial dispute in which a settlement is not reached by negotiations, and (*iii*) not to sanction or support a strike or satyagraha unless all methods of settlement have been exhausted and a majority of its members vote by ballot or show of hands in favour of such a strike.

Delegates to the annual session are elected by the qualified unions on the basis of one delegate for every 500 members or part thereof. A delegation fee of Rs. 5 per delegate is payable by the union concerned. The annual session considers resolutions recommended for adoption by the Subjects Committee in the first instance.

The Pradesh Branches convene a general meeting of the delegates—*ex officio* members elected for the annual session—to elect from among themselves members of the General Council of the Indian National Trade Union Congress on the basis of one member for every 5000 members or part thereof if the latter is not less than 1000. The General Council meets once in six months. It also meets as the Subjects Committee of the annual session before the commencement of the session. It meets again after the session for the purpose of electing the Working Committee including office-bearers.

The Working Committee consists of the President, five Vice-Presidents, the General Secretary, the Treasurer, and 27 members. Of the 27 members, 18 are elected by the General Council from amongst its own members. The remaining nine are nominated by the President in consultation with the General Secretary.

It is the duty of the Working Committee:

(*i*) to conduct the general administration of the Congress according to the resolutions of the Assembly of delegates and the General Council;

(*ii*) to take all such decisions and actions as may be necessary or expedient;

(*iii*) to examine and resolve all differences and disputes between the constituent organizations which consist of the affiliated unions, industrial federations and Pradesh Branches;

(*iv*) to regulate and supervise the working of industrial federations and Pradesh Branches;

(*v*) to fix the time, place and agenda of the delegates' session and the meeting of the General Council.

There are 20 Pradesh Branches--generally one for each of the States and in special cases more than one for a State. Each Pradesh Branch has its own constitution, which should not be inconsistent with the Constitution of the Indian National Trade Union Congress. Subject to the general supervision and control of the General Council, the Pradesh Branches are "in charge of

the affairs of the unions" within their jurisdiction and function in the same manner as the Indian National Trade Union Congress within its jurisdiction. A Pradesh Branch is required to pay to the Indian National Trade Union Congress such dues as may be fixed.

The funds of the Indian National Trade Union Congress consist of affiliation fees, application fees, delegates' fees, contributions from unions, branches, annual and special functions, donations, interest on investments, bonds and other sources.

Progress of the Indian National Trade Union Congress: The verified memberships of all the four central organizations of labour have been considerably less than the claimed memberships. The claimed and verified memberships of the Indian National Trade Union Congress are as follows:

Year	*Claimed*		*Verified*	
	Number of unions	*Membership*	*Number of unions*	*Membership*
1947	227	4,12,193	—	—
1948	484	10,30,402	470	9,71,859 (Partially verified)
1949	—	13,36,960	—	9,04,262
1950	N.A.	N.A.	N.A.	N.A.
1951-52	—	12,63,730	—	8,51,243
1952-53	988	13,47,320	587	9,19,258
1953-54	1044	13,75,782	606	8,88,291
1954-55	977	13,38,607	604	9,31,968
1955-56	1038	13,84,705	617	9,71,740
1956-57	1050	13,34,562	672	9,34,385
1957-58	1066	13,80,249	727	9,10,221
1958-59	1269	15,03,605	—	—

Right from its birth the Indian National Trade Union Congress has been derided by rival trade union organizations as a political and dependent body of the Indian National Congress. N. M. Joshi called it "an adjunct of the Indian National Congress" and alleged that it was neither a non-party nor a non-political labour organization "as the All India Trade Union Congress is." The Indian National Trade Union Congress says,[9] on the other hand, that "the truth is that it is only the All India Trade Union Congress which has become part of the Communist Party and the Hind Mazdoor Sabha a part of the Socialist Party. The Indian National Trade Union Congress has been maintaining from the very beginning that it is an independent organization. If some Congressmen worked among labour unions affiliated to the

[9] I N T.U.C.: *Some facts about I N.T.U.C.*, p. 6.

Indian National Trade Union Congress, such Congressmen in their trade union activities will be governed just as anybody else by the constitution and discipline of the Indian National Trade Union Congress." While it is not for the pot to call the kettle black, there seems little doubt that, rightly or wrongly, the Indian National Trade Union Congress is, in the eyes of the public, as much a wing of the Indian National Congress as the All India Trade Union Congress is of the Communist Party. How else can appearances be explained away? The Indian National Trade Union Congress was, as we have seen, inaugurated by the topmost leaders of the Indian National Congress. The senior ranks of the Indian National Trade Union Congress are filled by leaders who are all veteran Congressmen. The Labour Ministers at the Centre and in a number of States, appointed on the strength of their standing in the Congress Party, had been leaders of the Indian National Trade Union Congress and would, in all probability, revert to their old places when they cease to be ministers. This has already happened in the case of some important leaders. Congress Ministers in charge not of labour but of other portfolios freely attend conferences of the Indian National Trade Union Congress and take part in them while they do not go anywhere near conferences of other central organizations of labour. Leaders of the Indian National Trade Union Congress have far greater access to Labour Ministers than the leaders of other organizations. Within a year or so of its formation, the Indian National Trade Union Congress was declared as the largest central organization of labour without any period of waiting to see whether it was likely to last or would end untimely. All these and other indications have created in the minds of the public the impression that the Indian National Trade Union Congress is but a wing of the Indian National Congress.

Referring to the complaint made by communists and socialists that the Indian National Trade Union Congress is controlled by Government, the Indian National Trade Union Congress publication says that it is true that many nationalist trade union workers, including those who were responsible for the formation and running of the Indian National Trade Union Congress at one stage or the other, have become ministers in charge of labour in certain States and in the Central Government but that "this does not mean that Indian National Trade Union Congress has become part of the Government". "The fact is", the publication adds, "that Indian National Trade Union Congress through its former colleagues wants to shape the labour policy of Government for securing the legitimate rights and interests of labour."

The Indian National Congress has, from the very early days of the All India Trade Union Congress, taken a direct and intimate interest in the development of trade unionism in the country. In fact, but for the active sympathy and support of top Congress leaders like Lala Lajpat Rai, Pandit Motilal Nehru, Subhas Chandra Bose and Pandit Jawaharlal Nehru, it is unlikely that the All India Trade Union Congress would have had such a

painless birth or such a promising childhood as it was destined to have. There is, therefore, nothing surprising if Indian National Congress leaders again took the lead in bringing into existence the Indian National Trade Union Congress and in giving it the necessary start. The history of the formation of the two most important central labour organizations in the country — one, the oldest and the other, the largest — thus clearly shows that the controlling and coordinating part of the trade union movement has been brought into existence and sustained through the efforts of political parties and not through any strength or initiative developed within the working class itself. Whether this was inevitable and whether it is still necessary for political parties to identify themselves intimately with trade unions and to control them are matters which will be discussed elsewhere. Here it would suffice to mention the facts.

The criticism that the Indian National Trade Union Congress is a pampered body and that it receives preferential treatment from most Governments to the prejudice of other organizations of labour is, of course, a more serious one. That the Indian National Trade Union Congress was born with a pocket full of membership, that from the very first year of its existence it has been taken to be the most representative organization of labour, that it has progressed from year to year and that it receives the lion's share of representation on most consultative bodies and conferences do throw a lot of suspicion on Government's neutrality as between the various central organizations of labour. Without the sympathy, goodwill and support of the top Congress leaders, that is of the members of Government, the Indian National Trade Union Congress could not have built itself up to this pre-eminent position. While sympathy and support are understandable, what has to be seen is whether the close understanding and liaison between Congress Ministers — particularly the Labour Ministers — and the Indian National Trade Union Congress has resulted in injustice to the other central organizations of labour. Statistics have from time to time been produced by Labour Ministers to show that in the matter of ordering adjudications, the percentage of acceptance of proposals made by the All India Trade Union Congress, the Hind Mazdoor Sabha and the United Trade Union Congress, has been no less than the percentage of acceptance in the case of the Indian National Trade Union Congress. In other words, there is no evidence to show that Labour Ministers have freely accepted proposals for adjudication made by the Indian National Trade Union Congress but that they have turned a deaf ear to those emanating from unions of other persuasion. In matters of conciliation and adjudication which are regulated by the statutory provisions of the Industrial Disputes Act, no differentiation appears to have been made between Indian National Trade Union Congress unions and other unions. While this may be true of the responsibilities cast on the Government under the laws, any undue support given to the Indian National Trade Union Congress in organizational

and administrative matters would itself work to the detriment of other organizations of labour. The pampering of a rival might injure an organization even more vitally than a direct injury to it.

A few years ago complaints used to be heard that Registrars of Trade Unions were unduly, or even indefinitely, delaying the registration of trade unions sponsored by organizations other than the Indian National Trade Union Congress. A certain number of cases of abnormal delays in the registration of trade unions undoubtedly came to light, but the explanation generally offered was that the applicant had failed to supply all the information needed for registration. The allegation was so difficult to substantiate and yet, where abnormal delays extending over a period of years had occurred, so difficult to rebut without at least some suspicion sticking to the official concerned that the Central Government thought of making legislative provision in the matter. Clause 8 of the Trade Unions Bill, 1950, laid down that the Registrar should make an order in writing either directing the registration of the trade union or refusing such registration within three months of the date of receipt of an application for registration. Though the Bill was reported on by the Select Committee, it lapsed on the dissolution of Parliament and, for various reasons, was never reintroduced in the next Parliament.

In the matter of representation on international and national conferences based on the total membership represented by each central organization, complaints have been heard that the verifying officers, who are officers under the control of the Central Labour Minister, have resorted to manipulation. Such complaints have never been substantiated. Whenever an enquiry was made, the complaints invariably took on a different aspect, namely, that enquiry officers did not give adequate facilities to the unions of certain organizations for production of registers and other documents while they were more than generous in this respect to Indian National Trade Union Congress unions. The fact is that the Indian National Trade Union Congress was born with a large membership — thanks to the assistance and support of Congress leaders of the front rank. Immediately thereafter, and before the All India Trade Union Congress had had time to take stock of the situation and to rebuild itself on its shattered remains, the Communist Party unfortunately indulged in activities in some parts of the country which brought forth legal measures from Government. These measures almost paralyzed the activities of the All India Trade Union Congress. The 23rd session of the All India Trade Union Congress was held in Bombay in 1949 "more or less under the conditions of illegality" as mentioned by the All India Trade Union Congress itself. The History of the All India Trade Union Congress has this to say about the situation: "The Government let loose a reign of terror on the All India Trade Union Congress and its affiliated unions. Many offices of the All India Trade Union Congress unions were sealed. Important leaders of the All India Trade Union Congress

and its affiliated unions were detained or forced to go underground. The main object of this offensive was to smash the All India Trade Union Congress." Whatever be the motive of the Government — and this is inextricably linked with the political situation of the times, which is beyond the scope of the present study — the fact remains that on account of the measures taken by Government, the All India Trade Union Congress was completely disorganized and was not able to hold the next annual session, i.e. the 24th session, until five years later in 1954. Because of the seizure of its documents and registers and of the imprisonment of many union leaders, the All India Trade Union Congress was unable to prove its strength even where it was genuinely strong. Here then was a golden opportunity for the Indian National Trade Union Congress to capture the trade union movement, and the Indian National Trade Union Congress leaders naturally made the most of that opportunity with the continued sympathy and support of top leaders in the National Congress and in Government. The history of the Indian National Trade Union Congress might well have been different, in spite of the support of Congress leaders and of the sympathy of Governments, had the All India Trade Union Congress not allowed itself to be bound hand and foot as part of the action directed against communists. Though the All India Trade Union Congress has, in recent years, realized its mistake and abandoned what it has admitted[10] were "adventurist tactics", it has not been able to dislodge the Indian National Trade Union Congress from the pre-eminent position to which the latter had raised itself during the first five years of its existence — the most precious in the history of any organization that has to wage a war against those already entrenched in position. The scrutiny of memberships is being carried out at least for the last few years in accordance with a procedure accepted by the All India Trade Union Congress and on lines which permit the All India Trade Union Congress to raise objections from time to time. Such a procedure has taken the sting out of earlier complaints that there has been manipulation in the settlement of membership figures. If then the All India Trade Union Congress continues to occupy the second position, it cannot complain that the Indian National Trade Union Congress is being given representation on an imaginary and inflated membership. This does not mean that where representation is based not on membership but on other considerations, the All India Trade Union Congress has always had the same kind of deal as the Indian National Trade Union Congress. The All India Trade Union Congress gets the minimum to which it is entitled, but the Indian National Trade Union Congress walks away with the plums that are thrown in in addition to the prescribed ration.

Industrial Federations: The Indian National Trade Union Congress has

[10] A.I.T.U.C.: *An Outline of the History of the A.I.T.U.C.*, p. 15.

formed national federations of workers in several industries. All the unions affiliated to the Indian National Trade Union Congress and belonging to the same industry are required to join the corresponding industrial federation. The more important of these federations are:

(1) the Indian National Textile Workers' Federation,
(2) the Indian National Plantation Workers' Federation,
(3) the Indian National Mine Workers' Federation,
(4) the Indian National Sugar Mill Workers' Federation,
(5) the Indian National Cement Workers' Federation,
(6) the Indian National Transport Workers' Federation,
(7) the Indian National Dock Workers' Federation,
(8) the National Federation of Indian Railwaymen,
(9) the All India Defence Employees' Federation,
(10) the National Federation of Posts and Telegraphs Employees,
(11) the Federation of Workers of the Government of India Presses,
(12) the All India Bank Employees' Federation.

The oldest of these is the Textile Workers' Federation started in 1949. The others are more recent ones.

Consequences of Industrial Federations: The formation of a number of all-India industrial federations by the Indian National Trade Union Congress led to a new and worth-while experiment in the field of industrial relations. As in industrially-advanced countries in the West, there are, generally speaking, no national unions in India in direct charge of the affairs of all workers in an industry throughout the country. The result has been the setting up of a large number of independent unions of workers in an industry throughout the country. Sometimes there is a fairly big union of the workers in a particular industry in a town, but sometimes there are also several unions of workers in the same town or even a union in each establishment. All these unions—whether big or small—may also have rivals seeking to capture the allegiance of the same set of workers. Consequently workers have not been able to bring the weight of their combined strength to bear on employers. After all, the strength of workers lies in combination, and so long as a combined and united front cannot be presented, employers will not be impressed by mere numbers alone. Employers can generally beat down a number of separate unions, one by one, but experience shows that it is a far different matter if they have to face a single big union of a large number of workers. And if the union happens to include all or most of the workers in the industry throughout the country, no reasonable demand runs the risk of being rejected at the hands of employers. The absence of powerful national unions is one of the major defects of the Indian trade union movement.

Central organizations of labour cannot, and should not, undertake negotiations and collective bargaining with employers as if they were primary unions, though some of them try to do this from time to time. But the employer knows that the strength of even a central organization is, in the last resort, only the combined strength of a number of comparatively weak unions, all of which, since they function independently, may not have the same ideas on the pending problem. There is thus no substitute for powerful national unions. Industrial federations of unions affiliated to the same central organization reduce this weakness somewhat. They merely coordinate the activities of the affiliated unions in a particular industry, but even so, if this coordination is done intelligently, the combined strength of the unions could be brought to bear on the solution of pending problems. As one of the achievements of the Indian National Trade Union Congress federations during the last ten years has been claimed the enactment of uniform laws to protect and safeguard the interests of workers engaged in particular industries. And yet the Indian National Trade Union Congress realizes[11] that "there is not proper appreciation of the importance of these federations in a number of cases. From time to time scrutinies have been undertaken by the Central office and an insistence on the unions to join the recognized federations is being made." The formation of such loose federations can at best be a half-way house; it cannot be a substitute for powerful national unions. The Indian National Trade Union Congress federations have succeeded in persuading Governments to set up wage boards and to refer industrial disputes for adjudication, but it remains to be seen how far they are effective in negotiations with employers, which alone can be the test of the real strength of an organization. For instance, the Indian National Trade Union Congress report to the 9th annual session says that "it is regrettable to note that the two important agreements which were arrived at in 1955 between the workers and the millowners at Ahmedabad were not implemented by some of the employers." If this is the fate of agreements negotiated under the auspices of the oldest Indian National Trade Union Congress federation, viz., the Indian National Textile Workers' Federation, one can realize the weakness of a system which relies on federations rather than on central or national unions.

Branches: There are 'Provincial Branches' of the Indian National Trade Union Congress in all States. The functions of these branches have been stated in the following terms:

"All important questions pertaining to affiliation and disaffiliation of unions, keeping a watch on the activities of the affiliated unions, studying the activities of their organizations, giving legal aid to the affiliated unions

[11] *Report to the 9th Annual Session.*

including help for getting recognition, guiding them for maintaining proper membership registers and accounts, infusing the workers and the affiliated unions for taking up constructive activities for the welfare of the workers, organizing study circles, tours and visits of representatives of foreign sister organizations and also arranging workers exchange programmes are some of the important functions that the provincial branches are required to perform as the main liaison between the central office and the affiliated unions."

It is the branches that really undertake the creation of new unions and the enlargement of existing ones. The reports made by the various branches give details of the work done in this direction. For example, the Andhra Branch reported in 1957 that unions had been organized in almost all trades and occupations. The Assam Branch reported that it had organized strong unions in transhipment, motor transport, electricity, match factories, printing factories, engineering and other industries. Occasionally the reports of branches make frank mention of efforts made to neutralize rival unions. "The[12] Indian National Trade Union Congress Andhra Pradesh branch took sincere interests in the problems of these workers (market labour) with the result that a substantial section of the market labour in Guntur, Rajamundry and other important towns left the Communist fold to form their own unions and join the Indian National Trade Union Congress." Branch reports sometimes give interesting information regarding special matters. The Assam Branch said in its 1957 report that at the time of the last payment of bonus, a special fund of more than twelve lakhs of rupees was raised by plantation unions, of which more than one-fourth was credited to the Assam Branch. The report of the Kerala Branch contained a full account of how Indian National Trade Union Congress leaders had been beaten up by communists and All India Trade Union Congress leaders.

The Central Office: The General Secretary of the Indian National Trade Union Congress said in his report to the 9th annual session that "not much efforts are made by the leadership at different levels to make the unions properly organized, well equipped and self-sufficient. The number of unions which can be said to be real and effective and are in a position to help the smaller ones is not much." Speaking of the responsibilities of the Central Office, the report goes on to say:

"Normally it (Central Office) has to take up with the appropriate authorities at the Centre and in the States the workers' legitimate demands and grievances in respect of which either there has been undue delay or no attention is paid. These demands and grievances cover a wide range of subjects such as recognition of a union, implementation of awards, reference

[12] I.N.T.U.C.: *Report to the 9th Annual Session*, p. 99.

of disputes to tribunals, working of the labour legislation and demands regarding improvement in the conditions of work.... There are sometimes closures, lock-outs and victimization, and all these require to be represented to, or approach to, the authorities for appropriate and timely action in the interest of the workers. Victimization of prominent trade union workers by officials both in private and public sectors is not a new feature and it is commonly experienced everywhere. There is full justification and propriety in taking up all such cases with the appropriate authorities."

From the narration of the activities of the Central Office of the Indian National Trade Union Congress it would appear that the Indian National Trade Union Congress is functioning as one big miscellaneous central union on behalf of its affiliates whenever the latter find it difficult to get a grievance remedied locally. The Central Office has, from time to time, to take up questions such as the recognition of a particular union by the employer, the non-implementation of an award, the need to refer a dispute to adjudication or the securing of relief to a victimized trade union official. In other words, the autonomy of individual unions has little significance. Most of the individual unions are perhaps so weak that they themselves are not enamoured of their autonomy and would gladly welcome intervention by the Central Office of the Indian National Trade Union Congress for the sake of results. While there is nothing wrong in the Indian National Trade Union Congress's intervening in any particular case to secure relief, it is obvious that the system is defective. The Central Office cannot possibly take charge of the affairs of all constituent unions, and if the latter are too weak to be self-reliant, there can be no appreciable progress of the movement as a whole. Over-centralization will be the ruin of a democratic process such as the functioning of trade unions.

Achievements of the Indian National Trade Union Congress: Though born with a silver spoon in its mouth — a large ready-made membership, influential backing and encouragement from the top political leaders of the country, and sympathetic support from Governments — there is no doubt that the Indian National Trade Union Congress has survived the early misfortunes of pampered protegés. This could not have been possible, in spite of the solid support from influential quarters, if the leaders of the Indian National Trade Union Congress had not gone about their task energetically. Fortunately in the early days of the movement, which also coincided with the eclipse of the All India Trade Union Congress, the Indian National Trade Union Congress had the services of such well-known and selfless trade union leaders as Khandubhai Desai, Shantilal Shah, the late Harihamath Shastri, S. R. Vasavada, the late G. D. Ambekar, the late Somnath P. Dave, V. V. Dravid, K. P. Tripathi, R. Venkataraman, Abid Ali and others. Their contribution to the building up of the Indian National

Trade Union Congress has indeed been great. Much has been achieved during the last fifteen years or so. Many of the recent gains of labour are due, in no small measure, to the energetic pursuit of the welfare of labour by the Indian National Trade Union Congress—particularly by its leaders, both in and out of Governments. Among these may be mentioned the rationalized wage structures in many industries, profit-sharing bonus, social security, lay-off and retrenchment compensation, the various agreements entered into between employers and workers in various places, the settlement of a large number of disputes through adjudication, the enforcement of minimum wages on a large-scale and various other measures forming part of the first and second Five-Year Plans. It is easy enough for its opponents and critics to say that the Indian National Trade Union Congress is a department of the Government or that it is in league with employers who have found it a convenient tool for strangulating labour or again that it has sown the seeds of disunity among the ranks of labour. We do not propose to pass judgment on these allegations. It is, however, only fair to say that it has, as a matter of verifiable fact, done a lot to raise the status and standing of labour. Whether it has succeeded in building up a sound trade union movement is a different matter, on which opinion is bound to differ.

It is only to be hoped that the considerable progress that the Indian National Trade Union Congress has already made through hard work will not be frittered away through lack of foresight on the part of the leaders of the organization. Already many of those who built up the organization in the years immediately following Independence have left it to become ministers of government at the centre and in the States. It is to be feared that some deterioration has already set in in the standards of management of this organization.

The Hind Mazdoor Sabha: The socialists within the Indian National Congress were disinclined to join the Indian National Trade Union Congress when it was formed. In fact they were then quite uncertain about their political future. It took them some time to make up their minds that their future did not lie with the National Congress. They went out and formed a new party. Simultaneously they asked all trade unions sympathetically inclined towards them to walk out of the All India Trade Union Congress and to form a new central organization of labour called the Hind Mazdoor Panchayat. The weakness of this organization was all too apparent, and at the same time the fast-disappearing Indian Federation of Labour wanted some moorings in order that it might not disintegrate into aimless units. The Hind Mazdoor Panchayat and the Indian Federation of Labour, therefore, found it mutually beneficial to come together under the title of the Hind Mazdoor Sabha.

Aims and Objects: These have been stated to be:

(*i*) to promote the economic, political, social and cultural interests of the Indian working class;
(*ii*) to guide and coordinate the activities of affiliated organizations and assist them in their work;
(*iii*) to watch, safeguard and promote the interests, rights and privileges of workers in all matters relating to their employment;
(*iv*) to promote the formation of

(*a*) federations of unions from the same industry or occupation, and
(*b*) national unions of workers employed in the same industry or occupation;

(*v*) to secure and maintain for the workers:

(*a*) freedom of association,
(*b*) freedom of assembly,
(*c*) freedom of speech,
(*d*) freedom of press,
(*e*) right to work or maintenance,
(*f*) right to social security, and
(*g*) right to strike.

(*vi*) to organize for and promote the establishment of a democratic socialist society in India;
(*vii*) to promote the formation of cooperative societies and to foster workers' education;
(*viii*) to cooperate with other organizations in the country and outside having similar aims and objects.

Organization and Functions: Every affiliated organization is required to pay an application fee of five paise per member per annum subject to a minimum of Rs. 20 to be paid in one instalment within three months after the commencement of the official year. A delegation fee of Rs. 3 per delegate attending the Convention has also to be paid. Special levies may also be made by the General Council. Non-payment of any contribution for a period of six months after it becomes due renders the defaulting organization liable to be disaffiliated by the General Council after a notice of three months for the payment of dues.

The General Council is composed of the President, not more than five Vice-Presidents, the General Secretary, not more than two Secretaries, the Treasurer, and other members representing various industrial sections on the basis of one representative for every 4000 members or a major fraction thereof, with a minimum of one for each section. The office-bearers, namely, the President, the Vice-Presidents, the General Secretary, the Secretaries and the Treasurer are elected by the Annual Convention from among the delegates by a majority under a system of card voting and by cumulative voting where

there is more than one seat. Other members of the General Council are elected by the delegates assembled at the Convention, meeting separately in their respective Industrial Sections.

The affiliated organizations from each state are required to form a state council. If the General Council is satisfied that it would be in the interest of the trade union movement to establish a regional committee in a particular region, it may authorize the affiliated organizations from the region concerned to form themselves into a regional labour committee. The state councils and the regional labour committees have their own constitutions which, however, cannot be inconsistent with the constitution of the Sabha.

The Annual Convention of the Sabha is to be held every year. All affiliated organizations are entitled to be represented at the Annual Convention by one delegate for every 500 members or a major fraction thereof provided they have paid the fees.

The Convention is to be held once a year. The General Council has to meet at least once in six months and the Working Committee once in three months.

The most important body in the chain of responsibility of the Sabha is the General Council. Its functions are: (*i*) to elect the Working Committee of the Sabha, (*ii*) to determine the Industrial Sections from time to time, (*iii*) to hear appeals against the decisions of the Working Committee; (*iv*) to appoint group committees according to the approved plan, i.e. committees of 9 members each for five groups of employments; (*v*) to arrange for the holding of the Annual Convention; (*vi*) to make standing rules on such matters as determination of membership and *bona fide* character of an affiliated organization or an organization seeking affiliation, the duties and functions of office-bearers, arrangements about annual or special conventions, election of national and international delegations, disbursements of the funds of the Sabha, etc., (*vii*) to disqualify any organization, the contributions of which have become due, from voting, (*viii*) to disaffiliate any organization which has been defaulting for the last six months, (*ix*) to consider the applications of various trade unions or federations which seek affiliation to the Sabha, and (*x*) to assist the formation of regional committees.

The Working Committee is responsible for the day to day working, subject to the control of the General Council.

Progress of the Hind Mazdoor Sabha: The membership figures claimed by the Hind Mazdoor Sabha and verified by the Government of India's official agency for the various years are given in table on p. 109.

The Indian National Trade Union Congress has been saying that the Hind Mazdoor Sabha has steadily been losing its membership to the All India Trade Union Congress. According to the Indian National Trade Union Congress, "this was possible because the Hind Mazdoor Sabha for want of a firm policy and strict adherence to the principles of democracy has

Year	Claimed		Verified	
	Number of unions	Membership	Number of unions	Membership
1949	—	6,77,244	—	3,02,626
1950		Not available		
1951-52	—	4,26,149	—	1,79,840
1952-53	574	8,04,494	220	3,73,459
1953-54		Not available		
1954-55	335	4,76,630	157	2,11,315
1955-56	302	3,79,413	119	2,03,798
1956-57	263	3,73,672	138	2,33,990
1957-58	236	3,57,859	151	1,92,948
1958-59	324	4,80,290	—	—

been making frequent joint fronts with the Communists. It has been the experience all over the world that wherever any organization enters into a joint front with the Communists, it is always the Communists who emerge the stronger at the cost of the other constituent units of the joint front. This experience has proved only too true in the case of Hind Mazdoor Sabha."

Fields in which the Hind Mazdoor Sabha has Substantial Strength: The verified membership figures for the year 1957-58 show that the Hind Mazdoor Sabha had a strength of more than 10,000 members only in the following industries and employments:

Field	Number of unions	Membership
(*i*) Textiles	16	45,855
(*ii*) Engineering	18	16,077
(*iii*) Plantations	2	15,321
(*iv*) Mining	5	20,251
(*v*) Sugar	17	18,380
(*vi*) Local bodies	8	11,066
(*vii*) Ports and Docks	8	17,186

In 'Ports and Docks' its membership (17,186) is not far below that of the Indian National Trade Union Congress (22,287), which is the most representative organization. In 'Sugar' it is the second largest organization, but its membership is considerably below that of the Indian National Trade Union Congress (43,774). In the other industries mentioned in the list above, its membership is quite large as compared to that of the most representative organization. It is only in two fields, viz., 'Paper and Paper Products' and

'Bank Employees' that the Hind Mazdoor Sabha has been listed as the most representative organization.

The bulk of the membership of the Hind Mazdoor Sabha is concentrated in Bombay (81,110), West Bengal (39,971) and Madras (29,729). In the other States the Hind Mazdoor Sabha has only nominal memberships.

Seventh Annual Session: At the seventh annual session held in December 1958, the delegates had many unpalatable criticisms to make. One delegate said that the Hind Mazdoor Sabha as a whole had not gained enough maturity in spite of ten years of life. Another delegate said that it was unnecessary for the Secretary's report to mention the Sabha's failure to carry out the Bangalore resolution on Programme of Action as "such public discussion of our failures will invite ridicule upon ourselves." A third delegate said that the practice of some individuals holding important offices in a large number of trade unions was undesirable and that the Hind Mazdoor Sabha should discourage it. Yet another delegate said that the Hind Mazdoor Sabha itself need not do anything about trade union unity but that if the Hind Mazdoor Sabha got strong, others would be more willing to consider unity.

The address delivered by the President, S. C. Anthoni Pillai, to the Convention gave an indication of the attitude of the Hind Mazdoor Sabha to several problems. He said that the Hind Mazdoor Sabha came into existence because workers could not rely either on the Indian National Trade Union Congress or on the All India Trade Union Congress for safeguarding and advancing their interests. The Indian National Trade Union Congress had been found to be dependent on the patronage of employers and on the support of the Congress Government, and it had become quite incapable of defending adequately the interests of the working class. On the other hand the All India Trade Union Congress had come out in its true colours of being "a tool for the execution of the foreign policy of the Kremlin." He said that the experience of the last ten years had only confirmed the suspicions against these two organizations. The Communist Government in Kerala had put the professions of the All India Trade Union Congress to test. "The shooting down of striking workers in the cashew and plantation industries and the deal with Birla have begun the process of disillusionment among the workers within its fold." The 'deal with Birla' mentioned in the speech presumably referred to certain concessions, such as that the management would be entitled to dismiss recalcitrant workers and that it would not be required to meet labour's demands in respect of bonus, etc. until the profits came up to a certain level, made by the Communist Government. The President added that "the props which sustained many of the Indian National Trade Union Congress unions have begun to fall." Referring to the failure of the Government to implement the law, enacted ten years ago, providing for the compulsory recognition of trade unions,

he said that the failure was due to the fear "that the application, under legal sanctions, of standards for ascertaining which of several rival unions was the true collective bargaining agent would kill many of the Indian National Trade Union Congress unions, which were illegitimately recognized by employers on Government promptings." While expressing the hope that in the immediate years ahead the Hind Mazdoor Sabha had very good prospects of forging ahead, he admitted that the Sabha suffered from various organizational weaknesses. The subscription levied from its affiliates was so small that the Sabha's annual revenue was "much smaller than that of a moderately-sized union in the country." The President admitted that with meagre funds "there is no special service which the Hind Mazdoor Sabha can perform in return for its affiliates other than being an instrument for influencing governmental policies and the labour administration at the Central Government level." He was frankly sceptical of the future of the organization when he said:

"We operate with only two full-time organizers who are overburdened with work. We have no personnel for doing research work or assisting our affiliates in any trade dispute, other than giving them moral support in cases of grave emergency. Despite the fact that trade unionism in the country has been broadening and bringing within its fold wider layers of the working class, it has not been possible to help in the process of organizing the unorganized, nor is it in a position to select key industries for organizational drives.... The Sabha has no resources for giving advice or guidance on legal issues, on bonus disputes or on problems arising out of rationalization or modernization."

The Report of the General Secretary also was equally plain and critical. It said that the foundation manifesto had laid stress on the need to weed out rival trade unions and to discourage sternly the formation of small and scattered unions but that "we must frankly admit that in this respect our efforts have not been particularly effective." It recalled that out of 301 unions on its register on 31 March 1958 as many as 144 had memberships of less than 500 each while only 38 had memberships exceeding 2000 each. "This clearly indicates," says the Report, "not only that we have not been successful in sternly discouraging small and scattered unions, but that we have ourselves become victims of it."

The Sabha's attempts at rejuvenation of its various bodies seem to have met with little success. At the previous session held at Bangalore a resolution had been passed to the effect that conferences of the state bodies should be held in the shortest possible time. And yet the Secretary reported that only three States, namely, Uttar Pradesh, Bihar and Madras, had held their state conferences by February 1958 and two other States, Mysore and Punjab, by December 1958 "in spite of consistent pressure from the Head-

quarters." No state organizations had as yet been set up in Andhra Pradesh, Madhya Pradesh and Assam and only *ad hoc* committees had been set up in two States.

On one aspect of organization, namely, joint action with other central organizations, the Secretary realized both its dangers and futility. He said that the Indian National Trade Union Congress hardly ever favoured such joint action and that it was invariably an Hind Mazdoor Sabha-All India Trade Union Congress alliance that was brought about. Such concerted action was bound to be harmful to the Hind Mazdoor Sabha, for "the All India Trade Union Congress look upon it as a step in the campaign to inveigle, undermine, and eventually swallow up or disrupt the free trade union movement, by the well-known communist tactics of united fronts."

The effectiveness of the Hind Mazdoor Sabha and the grip that the headquarters organization has on the state units can be gathered from the way the 'Demands Day', sponsored by the Hind Mazdoor Sabha and supported by the All India Trade Union Congress, was held on 27 March 1958 all over India. The General Secretary complained that the experience of the observation of the day was "not altogether happy." In Bihar the state branch, contrary to the instructions from headquarters, refused to have any joint action with the All India Trade Union Congress and carried out its own separate Demands Day. In Bengal the state body joined with other opposition parties in staging a political demonstration on the day previous to the Demands Day. In Delhi, the Demands Day procession was not held at all.

The Demands Day was to have been followed by a token strike. But the General Secretary reported that "this circular letter of our President did not evoke any response from the participating organizations." Repeated efforts to do something produced only despondency as may be gathered from the General Secretary's report:

". . . granted all other conditions favourable to the staging of a token strike, the organization of the Hind Mazdoor Sabha in its present state would still prove inadequate to stage such action. We have little room for satisfaction over the Hind Mazdoor Sabha as a coordinated and compact organism. I regret to say that our effort in the direction of strengthening our organization has been altogether too meagre and that has been one of the most important causes for our inability to implement our policy decision. This Convention should fully bear this in mind that any decisions of direct action would remain unreal and ineffective unless they are backed up by a proportionate effort towards building up the organization equal to that action."

The achievements of the Sabha during the year under report were mentioned under the heading "workers' struggles." Referring to certain important strikes in the Premier Automobiles, Bombay, in the Buckingham

and Carnatic Mills, Madras, and in the ports and docks all over the country the report said: "Unfortunately the attitude of the Government in most cases continued to be one of hostility and the strikes did not always achieve their objectives,"

The income for the year ending 31 December 1957 was Rs. 11,530 and the expenditure less by Rs. 2,463 according to the audited accounts.

It is obvious from this depressing account given by the President and General Secretary themselves of this organization that the Hind Mazdoor Sabha is weak and that it counts for little as a central organization though a few unions affiliated to it put on a brave face and try to stage "struggles" locally. The Sabha does a reasonably good job at tripartite conferences called by the Central Government — an activity which serves to sustain its continued membership and, as its President remarked, enables the Sabha to fulfil its only role of being "an instrument for influencing governmental policies and the labour administration at the Central Government level."

The United Trade Union Congress: Little need be said about the United Trade Union Congress (U.T.U.C.) which is now all but extinct; nevertheless its history might give some idea of how trade union organizations have a knack of multiplying for reasons which have very little to do with any distinctive policy or technique. This is not peculiar to the trade union world; the way political parties with high-sounding names are ushered in with the usual fanfare only to linger for a while and then to go into oblivion is too well known to need detailed comment.

It will be recalled that a number of trade union leaders of the socialist bent met together in December 1948 to form a new central organization of labour called the Hind Mazdoor Sabha. Some of them were not satisfied with the principles and objectives of the Sabha and they consequently met separately at Calcutta on 27 December 1948 to form yet another central organization of labour called the United Trade Union Committee. This Committee called a conference of trade union leaders at Calcutta on 30 April 1949 and formed the United Trade Union Congress.

Though its formal aim was to establish a "pure" trade union movement, that is, one free from the control of political parties, its leadership was dominated by members of various left-wing political groups. The result has been that many treat it as a leftist organization.

The justification for the formation of a fourth central organization of labour was given by Mrinal Kanti Bose, its first elected general secretary, as follows:

"(The Congress) Government has adopted policies and measures that are calculated to establish a capitalist Raj. The influence of the 'capitalists' as a class on the Government has increased and has been increasing. . . . The keeping in abeyance of the nationalization of the industries for ten years

with the ill-concealed hint by cabinet ministers that the capitalists had no reason to worry on account of the time-limit is a clear indication that the Government is not moving towards the abolition of classes, but the perpetuation of them. The cordial invitation to foreign capital also shows which way the wind has been blowing from New Delhi. The threat to hang cloth millowners for the shameless fleecing of the common people is heard no more. On the contrary, facilities are being given to the profiteers to make more and more profit. The arbitration and conciliation machinery set up under the Industrial Disputes Act is being boomed as a priceless gift to the workers. . . . But the fact is that these tribunals have benefited the employers more than the workers . . . and have attracted all the evils that have made our civil courts a paradise for the rich and hell for the poor."

Objectives and Organization: The objectives of the United Trade Union Congress were stated to be:

(*i*) establishment of a socialist society in India;
(*ii*) establishment of a workers' and peasants' state in India;
(*iii*) nationalization and socialization of the means of production, distribution and exchange;
(*iv*) safeguarding and promotion of the interests, rights, and privileges of the workers in all matters, social, cultural, economic, and political;
(*v*) securing and maintenance for the workers of freedom of speech, freedom of press, freedom of association, freedom of assembly, right to strike, right to work or maintenance and the right to social security; and
(*vi*) bringing about unity in the trade union movement.

A union seeking affiliation must have been in existence for at least one year. It should have a minimum annual subscription of one rupee per member. Affiliation is to be granted by the General Council of the organization.

Its funds are made up of (*i*) an affiliation fee of one pice per member per annum subject to a minimum of Rs. 5, (*ii*) a delegation fee of Rs. 2 per delegate, and (*iii*) special levies fixed by the General Council. If a union fails to pay its dues within the prescribed period, it is disqualified from voting and from participating in the meetings of the United Trade Union Congress, and if the dues remain unpaid for more than 10 months, the union can be disaffiliated after being given a notice of three months.

The United Trade Union Congress consists of (*i*) the General Body, i.e., the delegates' assembly, (*ii*) the General Council, and (*iii*) the Working Committee of the General Council. The General Body, i.e., the delegates' assembly, is to meet once every year and consists of delegates nominated by affiliated unions. The number of delegates is based on the membership of

the union concerned. The delegates' session is the final authority in respect of the working of the United Trade Union Congress. It can hear appeals from the decisions of the General Council.

The General Council is composed of the president, five vice-presidents, one general secretary, not more than four secretaries, a treasurer, and representatives elected by the different trade groups. The powers of the General Council are: (*i*) to consider the applications for affiliation of trade unions, (*ii*) to recommend disciplinary action against unions and members, (*iii*) to frame bye-laws, (*iv*) to elect members to the Working Committee, (*v*) to elect delegates and advisers for the International Labour Organization, and (*vi*) to take all proper steps necessary to carry out the work of the United Trade Union Congress.

The Working Committee consists of all the office-bearers of the United Trade Union Congress and 20 other members elected by the General Council by a system of single transferable vote. The Working Committee has the responsibility for taking all steps for carrying out the resolutions passed at the last session of the United Trade Union Congress and for dealing with any emergency that may arise during the year affecting the interest of the working classes and generally for advancing and furthering the aims and objects of the United Trade Union Congress.

Questions are decided in all the bodies of the United Trade Union Congress either by agreement or by a majority of at least three-fourths. Thus a bare majority will not do. It is, therefore, not easy for power groups within the United Trade Union Congress to gain ascendancy by a narrow manipulation of the majority.

Progress of the United Trade Union Congress: The memberships claimed by the United Trade Union Congress and verified by the Chief Labour Commissioner year after year are as follows:

Year	Claimed		Verified	
	Number of unions	Membership	Number of unions	Membership
1951-52	—	2,39,274	—	1,04,213
1952-53	485	5,15,177	154	1,29,242
1953-54	407	4,42,137	169	1,63,997
1954-55	502	5,13,623	228	1,95,242
1955-56	545	5,38,032	237	1,59,109
1956-57		Not available		
1957-58	285	1,96,978	182	82,001
1958-59	285	1,97,587		

As the membership of the organization has gone below 1,00,000, it has, for all practical purposes, ceased to be treated as a central organization of

labour, and though it has not been deprived of its membership of the main tripartite organizations such as the Indian Labour Conference and the Standing Labour Committee, it is rarely invited to the numerous other conferences and committees convened by Government.

The Four Organizations: When there are as many as four central organizations of labour, of which three were formed within the last fifteen years or so, one is tempted to ask whether there are any real differences between their aims and objects and whether there was any justification for such profuse sowing of the seeds of disunity amongst the ranks of workers. As far as the economic and social aims of these organizations are concerned, there seems hardly any difference between them. One of the objects of the All India Trade Union Congress is to establish a socialist state in India. The objects of the Indian National Trade Union Congress, taken together, also aim at the building up of such a society though the word 'socialist' as qualifying the objective is not formally found in the constitution of the Indian National Trade Union Congress. In any case it is well known that the ideology of the Indian National Trade Union Congress in this respect coincides with that of the Indian National Congress, which, since the Avadi Resolution, has been explicitly stated to be the development of a socialist state in India. The Hind Mazdoor Sabha clearly says that it aims at the establishment of a democratic socialist society in India. And so does the United Trade Union Congress. So the ultimate pattern of society aimed at by the four organizations is the same. It may be argued that the type of socialist state aimed at by the All India Trade Union Congress is different from that contemplated by the other three organizations. Even if that be so, there seems no reason why so many organizations were needed to build up a socialist state of the democratic pattern.

The All India Trade Union Congress aims at socializing and nationalizing the means of production, distribution and exchange as far as possible. The Indian National Trade Union Congress too aims at placing industry under national ownership and control in a suitable form in order to realize the desired order of society. The Hind Mazdoor Sabha does not mention this objective separately, but it is only one of the consequences of the development of a socialist state. Without social control of the means of production and distribution in an appropriate manner, one cannot bring about a socialist state. The United Trade Union Congress includes among its objectives nationalization and socialization of the means of production, distribution and exchange. So in this respect too there is no difference in substance between the four organizations.

The securing and maintenance for workers of freedom of speech, of freedom of association, of freedom of assembly, of freedom of the press, etc. has been mentioned in the constitutions of all the organizations except the Indian National Trade Union Congress. These fundamental rights have no

longer to be written into the constitutions of individual organizations as they are guaranteed under the Indian Constitution. Nevertheless, the objective of all the organizations in regard to these fundamental rights is the same.

As regards generalized demands such as that there should be speedy improvement in the conditions of work and life of industrial workers, that there should be adequate security for all workers, that a living or fair wage should be assured to all, that working conditions should be reasonable, etc. there are provisions in the constitutions of all the four organizations aiming at these and similar objectives.

The machinery for organization of labour is again practically the same under all the four constitutions. The main organization generally works through state branches and industrial federations. The central organization itself is generally composed of a delegates' assembly, a general council, and a working committee, with a division of responsibilities among them which is more or less the same in the case of all the four organizations. There might be minor differences in detail regarding the number of office-bearers or the number of members to be elected on each body, but these are of little consequence as far as the actual working of the organization is concerned.

As regards the methods of attaining the desired objectives, there may be some differences, but the question is whether these alone would justify the proliferation of central organizations and the consequent disruption of the trade union movement. All the four organizations have retained the right to strike. So long as this ultimate weapon is available to all the organizations, there can be only comparatively small differences regarding the methods to be employed before resorting to direct action. All the four organizations have accepted measures such as collective bargaining, conciliation and voluntary arbitration for the settlement of disputes. So ultimately the only difference between these organizations will be about the place compulsory adjudication occupies in the scheme of settlement of industrial disputes. To this aspect of industrial relations, we shall revert at its appropriate place. All that need be said here is that any minor differences in the emphasis on voluntary methods or compulsion in the scheme of settlement of disputes, especially when all the four organizations are today freely enjoying the benefits of both compulsion and free will, cannot justify the setting up of powerful rival organizations to the complete disruption of a young trade union movement.

CHAPTER IV

THE LAW RELATING TO TRADE UNIONISM

Position in the United Kingdom: In the early days of their development, trade unions were not a force to be reckoned with; in fact they were hardly respectable and were often the victims of ridicule and attack from capitalists and other vested interests. In the United Kingdom, which has long supplied us with ideas and experience in the field of trade unionism, trade unions which developed in the wake of the industrial revolution received special attention from those hostile quarters. Those were the days of economic individualism when the capitalist felt that he had every right to manage his industry as he liked without any interference or obstruction from workers, individually or collectively. The law of supply and demand was the only one acknowledged by the employer as being entitled to regulate his relationship with his workers. Attempts at concerted action by workers collectively were claimed to be conspiracies in restraint of trade and hence punishable as a criminal offence under common law.

While employers sought to protect themselves against the consequences of concerted action on the part of workers purely from an economic and selfish point of view, governments were equally afraid of combinations on political grounds. The governing classes saw in these "conspiracies" an organized attempt at subversion of the existing order of things. It was an attack, they argued, by working classes against the aristocracy, which, by its valour and daring, had rightly come to wield power. Curiously enough, even in France, long after the Revolution, trade combinations were suppressed on the ground that the propagation of sectional interests was inconsistent with the rights of the people as a whole. Trade unionism thus became the target of attack from employers as well as governments, from autocrats as well as revolutionaries.

It was in such an atmosphere that the Combination Acts of 1799 and 1800 of the United Kingdom were passed, declaring unequivocally and statutorily, what had till then been accepted as common law, that trade combinations were unlawful and were to be dealt with as criminal conspiracies. At common law, charges of conspiracy could be heard only in the higher courts and not in magistrates' courts, and because of the delay and expense involved in the prosecution of offenders in the higher courts the number of prosecutions was not large. The Combination Act of 1799, as amended in 1800, simplified the procedure. Trade unionists could be prosecuted either swiftly and cheaply before magistrates' courts on charges of combination or more effectively, though less speedily, before the High Court

for conspiracy at common law. It was not until 1824, after Napoleon had been overthrown and the fear of revolutions had died down, that the Combination Acts were repealed. In the very next year, however, the reactionaries got the better of the situation and had the law amended so as to impose heavy penalties for intimidation, molestation or obstruction of workers who were prepared to work in face of any ban imposed by the trade union. This meant that in practice it was well-nigh impossible after 1825 to conduct a lawful strike and that the theoretical right of a trade union to strike in support of demands was largely nullified. Since, however, it was not unlawful for unions to exist, unions could adopt methods other than strikes to get their problems settled. The first experiments at collective bargaining had started.

In 1834 a number of trade unionists were prosecuted and sentenced to transportation on charges of administering unlawful oaths. This was under a statute directed primarily against political societies, but the law came in very handy against trade unions. Trade unions were constantly reminded that though the law gave them some protection, it also saw to it that they did not wander too far from the narrow path chalked out for them.

In 1858, an Act was passed making it lawful for strikers peacefully to persuade others to withdraw from work. This was the positive counterpart of the 1825 Act which had prohibited all intimidation, molestation and obstruction.

In 1867 a curious situation arose of the same act being held both lawful and unlawful under different laws. Though trade unions were legal statutorily, they were still unlawful bodies under common law and were, therefore, not entitled to proceed under the Friendly Societies Act to recover arrears of dues from defaulting officers.

This anomaly and the occurrence of a number of outrages in Sheffield attributed to trade unionists led to the establishment of a Royal Commission in 1867. The Commission submitted its report in 1871, on the basis of which the Trade Unions Act of 1871 was passed. It was this enactment that gave trade unions in the United Kingdom their charter. Trade unions were fully recognized as lawful bodies, with the right to sue and be sued in courts. Their actions were no longer to be treated as criminal conspiracies by courts.

While the 1871 Act gave trade unions protection from prosecution for criminal conspiracy, it did not give them immunity against action for damages. In the Taff Vale Case of 1901, the trade union concerned induced blacklegs not to work for the railway company and thus caused loss to the company. The House of Lords awarded £ 23,000 as damages against the trade union. It was only under the Trade Disputes Act, 1906, that trade unions got complete immunity against action for damages.

Conditions in the U.S.A.: In the United States of America, though there were a number of craft societies bargaining over wages, hours of work, closed shop conditions, etc., as early as the 1790's, there was not much serious

industrial strife because of the availability of land and of the possibility of changing over from industry to agriculture without much difficulty. It was only in the 1850's that some of the powerful national unions had their beginnings. The great depression which started in 1857 put back the clock and trade union organization suffered. After the Civil War, however, many national unions and local organizations came into existence and began to grow. The National Labour Union, a loose federation of trade unions, was formed in 1866. This was disbanded in 1872. On account of opposition from employers in the form of lock-outs and black lists, workers had to meet secretly and to organize a type of association complete with rituals, sign grips, passwords, etc. so that "no spy of the boss can find his way into the lodge room to betray his fellows." Thus came into existence the Order of the Knights of Labour in 1869. The conflict between skilled craftsmen and the unskilled and semi-skilled wage earners led to the formation of the Federation of Organized Trades and Labour Unions in 1881, which transformed itself into the American Federation of Labour in 1886.

In America too the trade union movement had its trials and tribulations before it was accepted first as a necessary evil and later on as a pillar of democracy itself. Employers used every weapon in their armoury, legal as well as illegal, to put down trade unionism, and it is to the great credit of the trade union movement that it emerged from those ordeals with a strength and vitality that is truly admirable. During most of the 19th century employers took out action against unions under the English common law of conspiracy which was held applicable. Between 1806 and 1815 shoemakers' unions were prosecuted in six court cases. In four of those cases the journeymen shoemakers were found guilty and punished. When protests were raised by the Jeffersonian democrats, the courts shifted their arguments to suit the prevailing mood and declared that combinations to raise wages were illegal only when unlawful means, such as coercion or intimidation, were used or workers conspired to injure a third person, such as a non-member, by trying to secure a closed shop. The shoemakers' unions had been condemned by the courts as "a design against the freedom of the nation". The trade union movement itself was on several occasions characterized as an un-American conspiracy. The early antipathy to the movement owed its origin to the prevailing system of slavery. When the slave worker toiled for long hours in some states for no pay at all, it was not easy for trade unions in other states to assert themselves for gaining wage increases and better conditions of work. Gradually the theory of conspiracy had to be discarded as outmoded. In 1842 Chief Justice Shaw of the Massachusetts Supreme Court helped to restrict conspiracy cases by laying down that a strike for closed shop was legal if conducted in a peaceful manner and that a union was indictable for conspiracy only if the goal or the means for attaining it was unlawful. Between 1869 and 1884 six states enacted laws to nullify the doctrine of conspiracy, but these were not wholly satisfactory.

Employers soon found a more effective means of dealing with unions by securing court injunctions. This tendency started in the 1880's. The injunction proved a great boon to employers as it could be secured quickly and before the employer had been put to loss as a result of the strike. What the employer cared for most was prevention of loss to himself and not belated vindication of his theoretical rights. Besides, an injunction was always preferable to prosecution from the point of view of industrial relations. It made the public feel that the strikers were on the wrong side of the law. Thus was loss averted, relations maintained, and public sympathy gained. If an injunction was disobeyed, an action for contempt of court followed with dire consequences. A very large number of injunctions were issued by courts until 1932 when the Norris La Guardia Act put severe restrictions on their issue. 16 States passed similar laws. The restrictions made it almost impossible for employers to obtain injunctions effectively. But the injunction was a terror to unions when the going was good. As an instance may be cited the injunction issued in the Pullmann strike of 1894. Eugene Debs and other union leaders were indicted for interfering with inter-State commerce in violation of the Sherman Anti-Trust Act. As they disobeyed the injunction, they were charged with contempt of court. Debs was sentenced to six months' imprisonment.

Another subtle way in which American employers sought to liquidate trade unionism was through the 'open shop' and 'yellow-dog contracts'. Under these arrangements the employer reserved his right to employ only non-union labour and the worker undertook not to join any union as a condition of his continued employment. Black lists of union members were maintained and all such workers weeded out. Thus trade unions could be emasculated without their being declared illegal or held under injunctions. It was only in 1932, under the Norris La Guardia Act, that yellow-dog contracts were declared illegal and heavy restrictions were placed on the right of the courts to grant injunctions. Full freedom of action for collective bargaining was not gained by labour until the enactment of the National Labour Relations Act, 1935, popularly known as the Wagner Act.

Yet another effective, if pernicious, method adopted by employers in the 19th century against trade unionism was to accuse trade unions of being agents of communism, out to bring about a political revolution. Even as the Abolitionists had been charged with conspiratorial intentions to overthrow the government by force and violence "for the benefit of our hereditary foreign enemy, Great Britain," so the new theme of employers was that trade unions were the emissaries of the Communist International bent upon changing the way of life of Americans. Employers skilfully, and with the assistance of a large and well-financed propaganda, played up the red scare. Richard Boyer and Herbert Morais say in *A History of the American Labor Movement*: "To the newspapers every striker was a foreigner and every foreigner a Communist, Anarchist, Socialist or Nihilist." The Press was naturally with the capitalists. The *New York Tribune* wrote in 1885 that "these brutal

creatures can understand no other reasoning than that of force and enough of it to be remembered among them for generations." That the propaganda was dishonest did not seem to worry anybody--least the journalists themselves. John Swinton, Chief Editorial Writer of the *New York Times* from 1860 to 1870 castigated himself in a moment of anguish and remorse: "What folly is this to be toasting an 'independent press'? We are the tools and vassals of rich men behind the scenes. We are the jumping jacks; they pull the strings and we dance." After creating a scare many employers used spies and strike-breakers to report on the activities of union leaders and to put down strikes by force. In this they were invariably helped by the state militia. The employers themselves maintained sizable squads of private police—sometimes clothed with the authority of the United States and called deputy marshals. The oppression of employers assumed such intense proportions at one time that labour found it necessary to organize secret meetings. That was how the Knights of Labour with their rituals and secrecy came into existence. As reprisal, unions often indulged in violence as in the case of the secret miners' organization in the 1870's called the "Molly Maguires."

Enough has been said to show that both in the United Kingdom and in the United States of America, trade unionism was under great handicaps in the early stages of the movement. While the shackles were mostly removed in the seventies of the last century in the former country, legal and other obstacles continued to blight the movement in the latter almost right up to the thirties of the present century. It is against these developments in the more advanced and industrialized countries that we must view the plight of our own trade unions.

History of Trade Union Legislation in India: The Madras Labour Union for Textile Workers formed under the presidentship of B. P. Wadia in April 1918, which was more or less the first properly organized trade union in the country, was taken to court by a powerful employer, Messrs. Binny and Co., for "interfering with the workpeople and dissuading them from working and thereby causing loss to the company." The company applied for an injunction against the Union and damages to the extent of Rs. 75,000. It was only then that enthusiastic trade unionists discovered that their activities lacked an adequate legal basis and that they were liable for prosecution and damages in much the same way as their British and American confrères had been many decades previously. The injunction applied for by the company was granted, and it became impossible for the trade union leaders to continue their activities on the "lock-out committee." The claim for damages, which would in all probability have been decreed, was avoided only by a settlement under which Wadia and other "outsiders" agreed to leave the Union for the workpeople themselves to manage. Wadia, who had done so much for the movement, had at last to bow to the employer and to beat a hasty retreat by availing himself of an opportunity to go abroad.

Soon an agitation for legalizing trade union activities started. The very fact that trade unionism was dubbed an illegal movement decades after its legality had been firmly established in Europe and America showed that even accepted concepts would not be tolerated if they were not backed by legislation. S. Saklatvala, Communist Member of Parliament, waited in deputation on the Secretary of State for India in 1920 and urged on him the need to undertake legislation for legalizing the trade union movement. The Secretary of State was sympathetic and promised early legislation by March 1921. N. M. Joshi moved a resolution[1] in the Central Legislative Assembly recommending "such legislation as may be necessary for the registration of trade unions and for the protection of trade unionists and trade union officials from civil and criminal liability for *bona fide* trade union activities." Sir Thomas Holland from the Government benches opposed the resolution on the ground that trade unions could be registered under Act VII of 1913 which covered associations formed for protecting commerce, science and charity. After a heated debate a modified resolution was passed recommending to the Governor-General-in-Council that he should take steps to introduce in the Indian Legislature "such legislation as may be necessary for the registration of trade unions."

THE TRADE UNIONS BILL, 1925

Though a bill was promised in 1922 itself, one was not introduced in the Legislative Assembly till 2 January 1925. The Member of the Governor-General's Executive Council in charge of the Bill attributed the delay to the opposition in certain quarters to such a measure. He said:

> "The opinions expressed are remarkable for their diversity. There are some who consider the proposed legislation to be premature, and who would prefer that we should not proceed with it at all. There are some others who, while recognizing the need for the proposed legislation, apparently consider the trade unions to be dangerous and pernicious growths, whose activities should be controlled rigidly so that they may not eventually overwhelm the commonwealth. There are others again who regard trade unionism as a new religion which, given sufficient license, would bring about the millennium much more rapidly than any existing religions promise to do."

The Bill was explained in the Legislative Assembly to be a purely permissive measure. The Industries Member who introduced the Bill said: "To those who desire to register, and who are prepared to accept the responsibilities which registration entails, we offer a privileged position which includes pro-

[1] *Legislative Assembly Debates*, Vol. I, Part I, 1921, p. 486.

tection in regard to their legitimate actions and also protection of their funds against peculation or dissipation on extraneous objects. And we have endeavoured to avoid imposing any responsibility which a genuine trade union would be reluctant to accept. There are unions possibly which regard the members as existing for the sake of the union. These unions will not register, and we shall not regret their absence."

N. M. Joshi speaking in the Assembly on the principles of the Bill said that though the Government had not yielded to the clamour of the employers to make the law compulsory, they had so framed the Bill that registration had, in fact, become compulsory for trade unions. By restricting immunity from criminal conspiracy to registered unions, members of unregistered trade unions and those who had no trade unions at all were left exposed to the rigours of the law of conspiracy. That would make registration compulsory because no trade union leader could afford to ignore the law of conspiracy. Registration, according to Joshi, was not very easy for trade unions because of the conditions prescribed. If a trade union wanted to assist another with funds, this would be contrary to the law as laid down in the Bill. Again if a trade union wanted to spend money on the election of certain candidates, this had not been provided for in the Bill. While the Bill made registration difficult, registration had become virtually obligatory. Section 1 of the Trade Disputes Act of 1906 of the United Kingdom was more widely expressed in this respect and should have been adopted. Then immunity would have been conferred on any act done in pursuance of an agreement or combination by two or more persons if it was done in contemplation or furtherance of a trade dispute unless the act, if done without any agreement or combination, would be actionable. N. M. Joshi said that "if we are going to have any trade union law in India, it should completely follow the model of the English law." He also pointed out that the provision relating to immunity from civil liability and that which freed a trade union from responsibility for the acts of its agents in certain circumstances did not go as far as the provision in the English law.

Chaman Lall, supporting N. M. Joshi's plea that rights and privileges should be extended to unregistered unions, said that by applying the law only to unions that had registered themselves "you are hampering the growth of trade unionism in the country." He too pleaded that the Bill should be approximated to the British legislation on the subject.

R. K. Shanmukham Chetty made two important suggestions, viz., (*i*) that peaceful picketing should be legalized, and (*ii*) that trade unions must be permitted to spend money in running elections to legislative councils, municipalities, local bodies, etc. He said that "political action of this kind forms not merely a legitimate function but perhaps one of the most important activities of trade unions and a provision must be made in the Bill to recognize and legalize this side of their activity."

The Select Committee which examined the Bill made a few significant

changes. It provided for the admission of honorary and temporary members in order to extend the privilege of immunity from criminal and civil action to the "outsiders" permitted to guide the trade union movement as officers of a union. The Bill had laid down that a majority of the total number of officers of every union should be persons actually engaged or employed in an industry with which the trade union was connected. The Select Committee reduced this proportion to one-third "in view of the low educational level of the ordinary labourer." The Bill had made no provision for expenditure of funds on political objects. The Select Committee introduced an elaborate provision (clause 16) providing for the constitution of a separate fund for political purposes, contribution to which would be optional for members.

Four members of the Select Committee including the Government Member-in-charge and officials wrote a minute of dissent objecting to the reduction in the proportion of actual workers on executive committees from a majority to one-third and also reserving comments on the proposal to set up a political fund. Two other members wrote another minute of dissent in which they said that the wholesome provision in the English law making it obligatory for members to contribute to the political fund unless they contracted out of that obligation had not been introduced into the Bill and that voluntary payment as to a charitable institution would handicap unions in carrying on propaganda in furtherance of their political and civic rights. They also said that the provisions relating to immunity from criminal and civil liability appeared highly restrictive as "it would be extremely difficult to take any organized action in a place where no registered union exists." They, therefore, suggested that the immunity should be extended "to all those who act in contemplation or furtherance of a trade dispute or join in an organization for the defence of the rights of employees in any industry."

The law governing trade unions today is substantially the same as the one enacted in 1926. The 1926 enactment was amended or adapted on four or five subsequent occasions, namely, in 1928, in 1937, in 1947, in 1960 and in 1964. The amendment of 1928 dealt largely with the procedure regarding appeals against the decisions of Registrars refusing to register a trade union or withdrawing a registration certificate. The 1937 amendment was carried out under the Government of India (Adaptation of Indian Laws) Order, 1937 and vested in the Central Government the powers of State Governments in respect of trade unions whose activities were not confined to one State. The Amendment Act of 1947 was of a far-reaching nature and contained provisions for the compulsory recognition of trade unions and penalization of unfair practices. For reasons which will be discussed later on, this Act was not brought into force and has, therefore, not affected the law relating to trade unions. The 1960 and 1964 amendments were minor ones and did not affect the structure of the law. A comprehensive amending and consolidating bill was introduced in Parliament in 1950, but it lapsed with the dissolution of Parliament and was not revived obviously because of the controversial nature

of some of its provisions. Thus in essentials the Trade Unions Act remains unchanged since its first enactment in 1926.

Though the Industries Member of Government, who piloted the Bill in the legislature, declared in his opening speech that enactments presented to the House should be Indian Bills, designed with ample knowledge and recognition of Indian conditions and "not merely blind imitations of Acts framed to suit different conditions in other countries," it would be correct to say that many of the provisions included in the Indian enactment had been lifted almost bodily from the corresponding British enactment, often without any change and sometimes only with small changes to suit Indian conditions.

Permissive Nature of the Enactment: The law is a permissive one; any seven or more members of a trade union may apply for registration of a trade union. Registration is not compulsory and unregistered trade unions would not in any way be illegal. However, as the preamble to the Act explains, the object of the enactment is to provide for the registration of trade unions and in certain respects to define the law relating to registered trade unions. In other words, the law has nothing to do with unregistered trade unions, and naturally such benefits, including immunity from criminal and civil liability, as are conferred by the law on registered unions will not be available to unregistered unions.

The question whether registration should be compulsory or optional was perhaps the most controversial issue at the time of the legislation. A large number of opinions, particularly from employers and Local Governments, at first favoured compulsion, though much of this demand was later on given up. Compulsory registration was favoured by those who wanted to heap up restrictions on trade unions. A Government spokesmen said that "from some of the proposals one might almost suppose that trade unionism was a form of criminal activity." The impracticability of compulsion in the matter of registration was, however, generally realized. If registration were made compulsory, one would have to punish all persons who had anything to do with unregistered combinations. As an official member put it: "Presumably if two sweepers or two members of the Indian Civil Service meet and consider how they can bring pressure to bear on their employers to secure a rise in pay, they form a combination and should be punished." The advocates of compulsion felt that as there had been only one stray case of a suit for compensation and injunction in the whole of India, the privileges of registration in the form of immunity from prosecution and civil litigation might not prove to be such a boon as had been made out and might not be a sufficient attraction for voluntary registration. They argued that the obligations arising from registration, which were so necessary for the building up of a proper trade union movement, would not be available if unions chose not to register themselves.

On the other hand, members who advocated the cause of labour argued

that though the Government had nominally not accepted the demand of employers to make registration compulsory, they had framed the Bill in such a way as, in effect, to make registration compulsory. The consequence of making immunity from criminal and civil action available only to registered unions was that unregistered unions would find it impossible to operate and hence would be forced to register themselves. While this might not be a calamity for unregistered trade unions, it would create serious situations for workers who had no unions at all and were trying to improve their condition. In England, they argued, the benefit of immunity from criminal action and civil liability was available even to unregistered unions under the Trade Disputes Act of 1906.

The Government's position was that unregistered trade unions should not be allowed to participate in the protective provisions of the Bill if they were not prepared to shoulder the corresponding responsibilities, particularly in the matter of auditing of funds and of inclusion of actual workers in the executives of unions.

Condemning the failure to protect unregistered trade unions as a colossal mistake, Lala Lajpat Rai said that in relation to future strikes there might be "a harvest of criminal prosecutions, suits for damages, suits for injunctions, etc." brought against workers. Fortunately these gloomy prognostications have not come true. While the exact number of unregistered trade unions is not known, some 80 per cent of union membership in the State of Bombay belongs to registered unions and only the remaining 20 per cent to unregistered unions. But the number of unregistered unions is very large, which means that unregistered unions are generally small ones. The spate of criminal prosecutions and suits for damages predicted has not materialized. That only shows that whatever be the precise legal position in regard to criminal conspiracy, injunctions, and similar weapons of the old world against trade unionism, employers would be very reluctant to rake up these for fear of being laughed at by the civilized world.

The trade unions law of the United Kingdom is different. There the Act of 1871 gave protection to all trade unions, irrespective of whether they were registered or not. Registration gave certain additional advantages not available to unregistered unions. A registered trade union has a statutory legal entity, can hold property, buy and sell land, and can sue and be sued in its registered name. A legal decision described a registered union in the following terms:[2] "A registered trade union is recognized by the law as a body distinct from the individuals who from time to time compose it. It is not a corporation, but is very like one. The association is not merely the aggregate of the persons who compose it and the presence of the corporate fiction is not necessary to secure its individuality. In an age of neologism, it might be called a 'near corporation'."

[2] H. Samuel: *Trade Union Law*, p. 9.

In the United Kingdom, an unregistered trade union can take out a certificate from the registrar that it is a trade union. This is to ensure that all benefits available to trade unions will be forthcoming. An unregistered union has no legal personality. It is just an association of members and will be viewed as such.

In India, as we have seen, unregistered trade unions suffer from all the handicaps from which similar trade unions in the United Kingdom suffer and, besides, do not also have immunity from criminal and civil action, which the latter possess. If then unregistered trade unions have gone unmolested in India, it is partly because they have had, at any rate until recent times, little more than nuisance value to employers and were not worth a serious fight. It is disappointing, however, that the hopes entertained at the time of the enactment of the Trade Unions Act that the benefits of registration would tempt a large number of unions to get themselves registered have only partially been fulfilled. It is only when big and powerful unregistered unions pose problems for the employer that the latter will be tempted to seek in full measure the legal remedies open to him.

'Trade Dispute': This expression has been defined as any dispute between employers and workmen or between workmen and workmen or between employers and employers which is connected with the employment or non-employment or the terms of employment or the conditions of labour of any person. This definition closely follows the definition contained in section 5(3) of the United Kingdom Trade Disputes Act, 1906 except for the addition of the words "or between employers and employers"—obviously to make it correspond to the definition of the expression 'Trade Union.'

In the Bill, as introduced, there was no definition of the term "workmen." N. M. Joshi pointed out that if this word was not defined, as in the English law, to mean all persons employed in trade or industry, whether or not in the employment of the employer with whom a trade dispute arose, the immunity from criminal and civil action granted by the legislation would not be available to several persons whose duty it was to act in a dispute. For instance, an officer of one trade union might go and help another trade union and he might not be a workman of the employer involved in the dispute. He too would have to be protected. The definition of "workmen" was, therefore, added. Under English law, it is well established that sympathetic action taken by workmen in any establishment or by persons wholly outside the dispute is equally protected.

The full significance of the expression "trade dispute" or "industrial dispute" will be discussed in connection with the Industrial Disputes Act, but it should here be pointed out that the dispute must be connected with employment, non-employment, etc. and not be some other dispute, say, a political or a personal quarrel.

'Trade Union': In the Bill, "trade union" was defined to mean "any com-

bination, whether temporary or permanent, formed primarily for the purpose of regulating the relations between workmen and employers or between workmen and workmen or between employers and employers and includes any federation of two or more trade unions." The rest of the present definition: "or for imposing restrictive conditions on the conduct of any trade or business" together with the three exclusions mentioned in the proviso was added during consideration of the Bill in the Legislature.

N. M. Joshi, moving that the latter portion of the definition be added said that one of the objects of any trade union was to impose restrictive conditions on the conduct of a trade or business and that consequently this had to be specifically mentioned in the definition.

Explaining the reason why the provision relating to the imposition of restrictive conditions was not included in the Bill, though it was found in the English law, the Law Member explained that in England there was the common law against restriction of trade but that there was no such law in India and that the provision referred to was not necessary. This view was challenged by Pandit Motilal Nehru who said that section 27 of the Indian Contract Act, namely, that "every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void," was precisely such a law against restriction of trade and that that section itself contained the necessary exceptions. Government agreed that the definition could be amended in the manner suggested by N. M. Joshi on condition that the proviso was also added, as it could be argued that a partnership, being an agreement between employer and employer and containing a restrictive condition as to the conduct of their business, would otherwise come within the definition of "trade union" and that its members would be entitled to the immunities which the Act conferred on trade unions.

The effect of the addition made in the legislature is far-reaching. Notwithstanding that trade restraints might otherwise be illegal, a trade combination for imposing restrictive conditions would be legal. Organizations of both workers and employers have operated a series of practices which could be called restrictive practices and which have the effect of imposing limitations on the productive efficiency of the industry or employment concerned.

Restrictive practices resorted to by trade unions of workers are often the result of a fear that there would otherwise be increasing unemployment. This is particularly so in under-developed countries burdened with the problem of unemployment. We are accustomed in these days to hearing complaints that the Indian worker opposes rationalization and modernization in industries. The case of the textile industry immediately comes to one's mind. Workers have often resisted any increase in the workload. The entrustment of a larger number of spindles or looms to a worker has not always been possible even when it is accompanied by an offer of a higher wage. Though a higher wage may be tempting to the individual worker concerned, it would

create problems for the union. Any large-scale adoption of higher loads is bound to create serious problems of unemployment. Similarly the replacement of ordinary looms by automatic looms has been the bone of contention between employers and workers for a long time. A worker who looks after two or four ordinary looms could perhaps attend to 8 or even more automatic looms. The opposition to rationalization thus springs directly from the fear of unemployment. The condition that has been accepted by employers and workers that rationalization, where agreed upon, should be carried out in such a way as not to throw out of employment those already employed is an attempt to allay the apprehension.

The opposition to mechanization of manual processes is another restrictive practice so common in India. An automatic grain elevator installed at one of the ports remained unused for a long time because of opposition from stevedore workers. There is constant opposition to the replacement of the manual posting of accounts in offices which have to handle hundreds of thousands of such accounts every month by machine posting.

There are restrictive practices of a different character too. Some trade unions insist on a measure of 'go-slow' as a matter of policy. Restrictions are placed on output too. So long as the prescribed output is produced, the worker would make further efforts only at the risk of displeasing his union. Even where the piece-rate system of payment prevails, workers have been known to stop the moment the standard is reached. One's earnings would thereby be restricted, but that is required by the union in the interests of employment. The story is the same whether it is a question of posting of accounts or of the manufacture of a number of pieces or of supervision over a number of workers.

There are, of course, other restrictive practices not related to employment. Where piece work is likely to undermine craftsmanship, restriction on output is a method of safeguarding quality. Often restrictions would, or should, be a method of safeguarding health. Instances have been known of stevedore workers earning as much as Rs. 40 or Rs. 50 per day when the average daily earnings are only Rs. 5 or Rs. 6. In such cases, apart from other factors, overstraining becomes inevitable. Again there may be restrictions based on safety. If an engine driver or a pilot is required to drive his train or fly his aircraft for unduly long hours, fatigue sets in and endangers the safety of the train or aircraft.

All these and numerous other restrictive practices would be within the legal competence of trade unions. The definition of "trade union" would override the provisions of section 27 of the Indian Contract Act in so far as the activities of trade unions are concerned. But whether such restrictions, even if legalized by the definition, are necessary or appropriate is not a matter for the Trade Unions Act to decide. Agreements, conventions or even special laws may be needed to ensure that restraints are reasonable and in the public interest.

Similar restrictive practices are operated by employers' organizations also. Among such practices may be mentioned agreements to restrict output, to increase or decrease the prices of goods, to seal up spindles and looms or to discontinue particular shifts, agreements not to sell particular brands inside or outside the country, etc.

Another suggestion in the legislature for the improvement of the definition of the expression "trade union" was the addition of the words "and the provision of benefits to members." It was explained on behalf of the Government that the provision of benefits to members was mentioned in clause 15 as one of the legitimate objects on which the funds of a trade union could be expended but that there were difficulties in stipulating this function of trade unions in the definition clause. If the definition included the words "*and* the provision of benefits to members," it would be obligatory on every trade union to provide such benefits whether it was in a position to do so or not. On the other hand, if the definition included the words "*or* the provision of benefits to members," as suggested by some persons, it would mean that a union, such as a purely friendly society, whose sole object was the provision of benefits to members, would be a trade union. Though the provision of benefits is mentioned in the United Kingdom Act of 1913, it has been held that the provision of benefits is "an additional and optional principal object" and that the expansion of the definition by the Act of 1913 does not seem to have altered the nature of the definition.

Registration: Any seven or more members of a trade union may apply for registration to the registrar by sending an application containing certain prescribed particulars and enclosing a copy of the rules of the trade union. Seven has been fixed as the number of persons who should join in applying for registration as that is the figure given in the legislations obtaining in the United Kingdom, in Canada and in Australia. There was a proposal that the number of members required to subscribe to an application should be more, say, 20, but employers demanded that for their trade unions, the number would have to be small. It was felt that seven would be a suitable number for unions of both employers and workers.

The rules of the trade union which should accompany an application for registration are important, for they are the guarantee that the trade union will develop into an effective and useful organization. The rules must, *inter alia*, provide for: (*i*) the whole of the objects for which the trade union has been established, (*ii*) the whole of the purposes for which the general funds of the trade union shall be applicable, (*iii*) the admission of ordinary members and honorary and temporary members who are permitted to become officers of the trade union, (*iv*) the conditions under which a member shall be entitled to the benefits assured by the rules, (*v*) the manner in which the rules shall be amended, varied or rescinded, (*vi*) the manner in which the members of the executive and the other officers of the trade union shall be

appointed and removed, (*vii*) the safe custody of the funds of the trade union and annual audit, (*viii*) the manner in which the trade union may be dissolved, and (*ix*) the maintenance of a list of members.

The Bill, as originally introduced, provided that the rules should lay down the scales of salary, allowances and expenses admissible to the members of the executive and the other officers of the trade union. Some members of the legislature demanded that this be deleted. A lively discussion took place in the legislature, in the course of which N. M. Joshi declared that "no more absurd clause was ever drafted by any government." The Representatives of the Government explained that this was necessary to prevent the executive voting at the end of the year all the surplus funds as an honorarium to an officer. This argument did not carry conviction with the legislature and the offending clause was deleted.

Another clause regarding which there was much discussion was the one which said that the rules should provide for an annual audit "in such manner as may be prescribed." Several members of the legislature objected to power being given to the Government to decide as to who should audit the accounts of a trade union. They pointed out that the English law did not provide for the prescribing of rules by government regarding auditors. They argued that the Government might prescribe chartered accountants who might prove too costly for many unions. Other members and the representatives of the Government said that having regard to one's experience in connection with the cooperative movement and the working of the Indian Companies Act, it was necessary to provide for an independent audit. The motion for deletion of the clause was lost.

Objects on which the General Funds may be Spent: These are listed in section 15 of the Act. Clause (d) which says that the funds of a trade union may be spent on the conduct of trade disputes "on behalf of the trade union" came in for much criticism. It was argued that if the funds of a trade union could not be spent in respect of the trade disputes of another trade union or even of non-union workers, the solidarity and one-ness of labour would be destroyed. Recalling that unions in India had received financial assistance from unions abroad, N. M. Joshi said that such mutual assistance was very necessary as the wages of workers in one country had profound effects on the wages of workers in other countries. It was explained on behalf of the Government that clause (j) of the same section permitted payment, in furtherance of any of the objects on which the general funds of a trade union could be spent, of contributions to the general funds of any other registered trade union. That provision would no doubt not permit of payment to unregistered trade unions or to unorganized labour. This was inevitable as the law dealt with only registered trade unions and the intention was to encourage registration.

Lala Lajpat Rai argued that "if this Bill seeks to provide that no registered

union can spend any part of its funds in the furtherance of the objects of labour, I submit that it will be hampering the development of trade unions, and it is worth considering whether on the labour side we ought to have this Bill." M. K. Acharya suggested that while clause (d) should remain unchanged—a provision meant specifically for the conduct of the trade disputes of the trade union in question—clause (j) should be liberalized so as to permit of payment to unregistered trade unions or to the cause of labour in general. While dealing with clause (j) N. M. Joshi said that if only a few people were organized and the large mass of people outside were not organized, the organized people could not achieve anything. "The first thing, therefore, that a trade union should do is to organize those people who are not organized, and if I were a trade unionist and if I were in charge of a trade union, I should spend even all my money in organizing those who are not organized."

Finally the Government agreed to support the amendment permitting the expenditure of a union's funds on "any cause intended to benefit workmen in general" provided that such payment did not exceed one-quarter of the amount of the general funds available at the disposal of the trade union. The Member-in-charge suggested that this limitation was necessary inasmuch as it was "bound to happen in the present condition of education among workmen in India that in a moment of frenzied enthusiasm to which they have been worked up by interested persons, a registered trade union may be persuaded to hand over the whole of its available funds for some particular purpose with the result that it may become bankrupt." The clause was amended accordingly.

Separate Fund for Political Purposes: The Bill, as introduced in the legislature, did not permit of the expenditure of the funds of a registered trade union on political objects. A circular letter issued by the Government of India stated as follows:

> "...following the great majority of the replies received, the Government of India have decided to exclude such subjects from the list. This will not prevent trade unions or their leaders from advocating political policies, but it will ensure that funds contributed primarily for trade union purposes are not expended on causes in which the bulk of the members have little interest."

Even before the Bill went to the Select Committee there was much opinion in favour of relaxation of this rigid exclusion of political objects from those on which a trade union could expend its funds. The Select Committee provided for the constitution of a separate political fund to be used for the promotion of the civic and political interests of the members of a trade union on condition that no member should be compelled to contribute to that fund.

Contribution to the polical fund would be entirely voluntary.

The Member-in-charge while moving consideration of the Bill, as reported on by the Select Committee, explained the essential difference between the relevant provision of the English Law of 1913 and that incorporated in clause 16 of the Bill by the Select Committee. While the English law provided for "contracting out," the Indian Bill provided for "contracting in." In England every member of a trade union which had constituted a political fund had to subscribe to it unless he chose to give notice to the contrary. In India the liability to pay a contribution to the political fund would arise only if a member gave notice of his intention to contribute. The Member-in-charge said that he did not at all like the newly-introduced provision as that might constitute a weapon in the hands of interested persons to exploit workmen.

During consideration of the Bill some members sought to replace "contracting in" by "contracting out," but the legislature did not accept the amendment.

Immunity from Criminal Liability: The law, as enacted, reads that "no officer or member of a registered trade union shall be liable to punishment under sub-section (2) of Section 120-B of the Indian Penal Code in respect of any agreement made between the members for the purpose of furthering any such object of the trade union as is specified in section 15, unless the agreement is an agreement to commit an offence." Section 120-B of the Indian Penal Code refers to the offence of criminal conspiracy as defined in section 120-A. When two or more persons agree to do, or cause to be done, an illegal act or an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy. However, no agreement, except an agreement to commit an offence, amounts to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

An amendment was moved in the legislature seeking to add the words "except that which is due to breach of contract of service or desertion" after the word "offence." Without the suggested amendment, an agreement between the members of a registered trade union to commit an offence, to wit, desertion under the Merchant Shipping Act or breach of contract of service in a public utility service under the Post Office Act, being an agreement to commit specific offences, would not be saved by the provisions of section 17. The amendment would have extended the immunity from criminal prosecution even to such agreements relating to desertion or breach of contract of service under the Post Office Act. The Government refused to accept the amendment which was negatived.

This provision of the Indian law is in substance the same as section 2 of the U.K. Trade Union Act, 1871 which says that "the purposes of any trade union shall not, by reason merely that they are in restraint of trade, be deemed to be unlawful, so as to render any member of such trade union liable to

criminal prosecution for conspiracy or otherwise." The reason for adopting a different form is that while conspiracy is punishable under the Common Law in England, it is an offence punishable in India only under section 120-B of the Indian Penal Code read with section 120-A. That was why a much simpler and more direct drafting was found possible in India.

Immunity from Civil Suit: Sub-section (1) of section 18 of the Indian Trade Unions Act says that "No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute to which a member of the trade union is a party on the ground only that such act induces some other person to break a contract of employment, or that it is in interference with the trade, business or employment of some other person or with the right of some other person to dispose of his capital or of his labour as he wills."

An important amendment which was suggested in the course of the discussion in the legislature was the deletion of the words "to which a member of the trade union is a party." It was mentioned that this provision would restrict immunity from civil suit to members of the particular trade union which had raised a trade dispute but that such immunity would not be available even to members of another registered trade union which was not directly a party to the particular trade dispute in question. There would, of course, be no question of immunity to members of unregistered trade unions or to groups of workers who did not belong to any trade union if they attempted to pull their weight with the members of a trade union which had raised the dispute. The representatives of the Government argued that immunity should not be available to members of unregistered trade unions or to workers who did not belong to any trade union. They pointed out, however, that because of the definition of "workmen" which included all persons employed in trade or industry whether or not in the employment of the employer with whom the trade dispute arose, the immunity from civil action conferred by section 18 would be available to the members of any registered trade union who were indirectly affected by the dispute.

Protection in Case of Sympathetic Strikes: The definition of "workmen" included in the Indian Trade Unions Act was taken from section 5(3) of the U.K. Trade Disputes Act, 1906. Before the enactment of the latter law, it used to be considered that a trade dispute was limited to a dispute between an employer and the persons employed by him. Sympathetic action by the employees of other employers would not have become entitled to the protection afforded by the Trade Unions Act. That view has completely changed because of the definition of "workmen." Sympathetic action taken by workmen employed anywhere in trade or industry, including action by persons who are completely outside the dispute, would now be protected by the English law.

Section 3 of the U.K. Trade Disputes Act, 1906 serves the same function as section 18 of the Indian Act. It reads as follows:

> "3. An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground only that it induces some other person to break a contract of employment or that it is an interference with the trade, business, or employment of some other person or with the right of some other person to dispose of his capital or his labour as he wills."

If this provision is compared with section 18(1) of the Indian Trade Unions Act, it will be seen that the concluding portion in both the laws beginning with the words "on the ground only" is identically the same. Instead of the words "An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable" occurring in the U.K. Act, we have the words "No suit or other legal proceeding shall be maintainable in any civil court against any registered trade union or any officer or member thereof in respect of any act done in contemplation or furtherance of a trade dispute." The only difference between these two provisions is that the Indian Act limits the provision to registered trade unions and their officers and members, while the U.K. Act extends the provision to any person, including members of unregistered trade unions or even non-members. This difference arises from the fact that the whole of the Indian Trade Unions Act is applicable only to registered unions and not to others. Ignoring this difference, we see that the difference between section 3 of the U.K. Act and section 18 of the Indian Act lies in the additional words contained in the latter Act, viz., "to which a member of the trade union is a party" which qualify the words "trade dispute." Surely these words have a significance, as otherwise they would not be there. The explanation given by the representatives of the Government is only a partial one. It may well be—though this is by no means clear—that because of the newly-introduced definition of the word "workmen", it is open to the members of any registered trade union to make themselves a party to a dispute occurring between the members of another trade union and their employer and perhaps also, if need be, to implicate their own employer. But unless they make themselves a party to a pending dispute, they would not be entitled to immunity. N. M. Joshi and Chaman Lall said that they, as officers of the All India Trade Union Congress, would have to take part in trade disputes to which one of the All India Trade Union Congress's affiliates was a party. It was doubtful, they said, whether without making the All India Trade Union Congress itself a party to the dispute, the officers of the All India Trade Union Congress would be entitled to any protection if they interfered in the dispute concerning the affiliate. The effect of the U.K. Act would seem to be wider. There persons wholly outside the dispute or even mere busy-bodies would be entitled to protection (Conway *vs.* Wade, 1908, 2 KB 844).

It will be noticed that the definition of "workmen" was introduced on the basis of an amendment moved during the consideration of the Bill. So its effect could not have been taken into account by Government in drawing up the provisions of section 18. There is also the point that the official in charge of the drafting of the Bill was clearly of the view that "the sympathetic strike deserves no encouragement." So it is possible that the words "to which a member of the trade union is a party" were meant to have their full meaning and that the immunity was to be restricted to the actual parties to a dispute. If there has been any change in the position as a result of the introduction of the definition of "workmen" enabling other employees also to become parties to the dispute, that was not a consequence originally visualized.

Sub-section (2) of section 18 says that a registered trade union shall not be liable in any suit or other legal proceeding in any civil court in respect of any tortious act done in contemplation or furtherance of a trade dispute by an agent of the trade union if it is proved that such person acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union.

An amendment moved by a member representing the employers' point of view, viz., that the whole of this provision be deleted so that trade unions might learn to acquire a sense of responsibility, was negatived without much discussion, a member remarking that the clause laid down a universal proposition of law, viz., that a whole body was not liable for the offence of an individual member of it unless it was proved that that individual committed the offence with the connivance or active support of the general body.

Then there were two other amendments put forward by members representing the workers' point of view. The first suggested that all the words beginning with "if it is proved" be deleted and the second that this portion be replaced by the words "unless it is proved that such person acted with the knowledge of, or in accordance with express instructions given by, the executive of the trade union." These amendments had two specific objects. The object of the first amendment was to bring the Indian law in line with the corresponding provision of the English law, i.e., section 4 of U.K. Trade Disputes Act 1906 which says: "An action against a trade union, whether of workmen or masters, or against any members or officials thereof on behalf of themselves and all other members of the trade union in respect of any tortious act alleged to have been committed by or on behalf of the trade union, shall not be entertained by any court." This provision is so wide that a trade union cannot be proceeded against in respect of any tortious act of its agents even where such act was committed at the instance of the executive of the trade union. This provision does not affect an individual tortfeasor who, even while acting on behalf of a trade union, can be sued in his personal capacity. The prohibition applies to torts in general, whether committed in the course of a trade dispute or outside such dispute. It appears that such complete protection had to be given to trade unions because of the

growing tendency of employers to file civil suits against trade unions with a view to exhausting their funds.

The second amendment was meant to serve a different purpose. As the Bill was drafted, the onus of proving that the tortfeasor acted without the knowledge of, or contrary to express instructions given by, the executive of the trade union lay on the trade union. The amendment sought to transfer this burden of proof to the person claiming relief. The original Bill contained yet another provision, viz., that to escape liability the executive should have repudiated such act at the earliest opportunity and by all reasonable means and with reasonable publicity. This provision came in for scathing criticism.

As regards the first amendment it was explained that Government were not prepared to go as far as section 4 of the U.K. Act. That section was the result of the Taff Vale case in which it was laid down that a trade union could be sued in a civil court for the torts of its servants or agents. A trade union had many spare-time officials who might inadvertently or otherwise commit some wrong against an employer. For all such wrongs the union was to be held liable. The damages awarded in the Taff Vale case were crushing; the progress made by trade unionism was in jeopardy. It was explained that the corrective action contained in section 4 of the 1906 Act was the result of political expediency and that such a blanket protection was not proper in the early stages of the development of trade unionism in the country.

As regards the second amendment seeking to transfer the onus of proof to the plaintiff, Pandit Motilal Nehru spoke forcibly as follows:

"The principle that I asked the House to adopt is a very well-known principle of English law. It is that no principal is liable for the act of his agent unless that act falls within the purview of the authority of the agent. The clause as it stands is a most extraordinary one. It not only throws the burden of proving its innocence upon the union and presumes the liability of the union if no evidence is adduced by it, but imposes most unheard-of obligations upon the union. The whole body, of which a particular officer is a member, is to be held in damage unless and until it proves not only that the act or the omission of the officer which involved him in damages was without its express knowledge but also takes the earliest possible opportunity to repudiate the act. Whoever heard of any such liability being fixed upon a person who is not the actual doer of the act and not directly responsible for the act or the omission?"

Another member, Colonel Sir Henry Stanyon, put the other side of the case equally effectively: "This sub-clause deals first of all with an act done—by whom?—not by any person *purporting to act* on behalf of a trade union but on behalf of a person who *is acting*, that is to say, some officer or some executive agent of the trade union. Now, who is the best person, the best

informant of the authority which a person so acting possesses from the trade union? It is a principle of the onus of proof that the person best acquainted with the facts is the person who ought to be asked to prove them."

The Law Member of the Government of India, explaining the scope of the clause, said that under the ordinary law, all that a plaintiff would have to show was that the person committing the tort acted as the agent of the principal but that the clause proposed limited that liability. Even if the person committing the tort was the agent of the principal, if the principal could show that the agent acted without his knowledge with regard to that particular act or against the express instructions of the principal, the principal would not be liable. It was thus a case of restricting the liability of the principal rather than of heaping responsibilities on him.

In the end after the clause was suitably reworded, the difference of opinion was only on the question whether the executive should repudiate the tortious act of the agent. Supporting the need for such repudiation, the Home Member of the Government said: "An agent of a trade union issues a libel. It is not within the scope of his instructions. He has been told to get out a pamphlet putting the case for the workers. In the course of that pamphlet he has in fact put up a libel. Well, it would be quite reasonable for the trade union in defence to say 'we do not approve of this; we do not ratify this and we have done what every honest man would do; we have come forward at the earliest opportunity and with reasonable publicity and we have said we disavow this libel.' But under the law, as Mr. Joshi would have it, there would be no repudiation necessary. It would be sufficient to prove that it was without their knowledge, and during the whole time that the libel continued they would be enjoying the benefit from it, and without repudiation they would still have a perfectly good defence in law. Now, I ask the House, is that reasonable?"

The provision that the executive should repudiate the act at the earliest opportunity and by all reasonable means and with reasonable publicity was eventually deleted.

Outsiders as Officers: Section 22 of the Trade Unions Act lays down that not less than one-half of the total number of the officers of every registered trade union shall be persons actually engaged or employed in an industry with which the trade union is connected.

The Bill, as introduced, had said that a majority of the total number of officers of every registered trade union should be persons actually engaged or employed in an industry with which the union was connected. The Select Committee substituted "not less than one-third" for "a majority" "in view of the low educational level of the ordinary worker." The official representatives on the Select Committee entered a minute of dissent in which they said that the amended clause would in practice give trade union leaders the power to restrict the representation of the workers from among their own

ranks to the minimum of one-third of the executive and that it might be a long time in many cases before the workers realized that it was quite permissible for them to obtain more, and still longer before they were able to enforce their rights in this respect.

Moving that the one-third, introduced by the Select Committee, be changed to one-half, a member, S. K. Datta, stated the case for reducing the number of outsiders: "An important principle of education is that if you overload an organization such as these trade unions are with those who are much better educated, you will never get that life growing up in these unions which we so much desire. Take, for example, a schoolboy society. If a schoolboy society were overloaded with a majority of schoolmasters, it would never function, ... we believe that they (uneducated people) must be compelled to undertake the responsibility within the organizations that are created for their benefit."

The members representing the point of view of trade unions said that the whole of the clause should be deleted and that there should be no provision relating to outsiders in the legislation. If it suited a trade union to elect all outsiders as officers, that was their business. "It is not our business to lay down in the Bill how many outsiders there shall be, or whether there shall be any outsiders, or whether there shall not be any outsiders."

Regarding the proportion of outsiders, a member, Chaman Lall, referred to a pertinent point. He said that even the big unions could not, in actual working, afford to have more than two or three outsiders at the most. Generally the president or the secretary was an outsider and all the rest of the executive were workers. In a big union like the North-Western Railway Union with a membership of 70,000 there were just one or two outsiders. Similarly in the case of the Bombay Tramway Union, the only outsider was the General Secretary. "It does not matter in the least whether you make it (i.e. proportion of workers on executives) 99 or 50 per cent, because in any case outsiders are only a handful of the union executive in any part of India that you may choose to name." The point made out of by Chaman Lall was that only just one or two persons really counted in a union and that all others just followed the powerful man. In fact too many outsiders might have created problems of competition within the executive. The fewer the number of outsiders on an executive, the more complete and absolute would be their hold on the trade union. This important point is often missed in what are purely academic discussions about the percentage of outsiders on the executives of unions.

Peaceful Picketing: Both the law as enacted, and the Bill as introduced, were silent on the subject of peaceful picketing. Members favourably inclined towards labour wanted a provision which would state explicitly that workers had the right of peaceful picketing on the lines of section 2 of the U.K. Trade Disputes Act, 1906, which said that "it shall be lawful for one or

more persons, acting on their own behalf or on behalf of a trade union or of an individual employer or firm in contemplation or furtherance of a trade dispute, to attend at or near a house or place where a person resides or works or carries on business or happens to be, if they so attend merely for the purpose of peacefully obtaining or communicating information, or of peacefully persuading any person to work or abstain from working." However this point was not pressed very much. Chaman Lall said that labour leaders on the Select Committee did not deliberately raise it as they understood that picketing was not illegal under the ordinary law and that it would become illegal only when it was converted into intimidation. The case was different in Great Britain where picketing had long been illegal.

Members representing the employers' point of view regretted that picketing had not been prohibited in the law. They felt that picketing was invariably accompanied by intimidation and that evidence of violence was difficult to secure and adduce. It was not as if the Government had not applied their minds to this problem at all. While realizing that in India "strikes of any importance have been generally associated with systematic intimidation and not infrequent violence," they (Government) agreed with the view (of Professor Jevons) that "refusal to countenance picketing in any form will undermine the whole trade union movement in India" and that "a law prohibiting all picketing would be an altogether unwarrantable interference with their liberty which trade unions enjoy in every civilized society." The Government thought that the existing law in India was in accordance with section 2(1) of the U.K. Trade Disputes Act, 1906 and that it was also in line with the law generally accepted in America. Consequently there was no particular reason for interfering with the law regarding picketing in any way.

The Indian Trade Unions (Amendment) Act, 1947

Amendments of a substantial nature to the Indian Trade Unions Act, 1926 were made by an amending Act of 1947, but for reasons which will be mentioned presently, that Act was not brought into force and is inoperative. Nevertheless it is an important piece of legislation and deserves detailed examination.

Since very early days trade unions have been worried over the question of recognition by employers. The significance of recognition was not the same at all times. In the early days when trade unionism had yet to receive the stamp of legality and legitimacy, recognition meant hardly anything more than bare condescension on the part of the employer to receive complaints and demands from the union and to discuss them with it. It was widely assumed that unions which got themselves registered under the Trade Unions Act would be recognized, and some employers freely gave out that they would favourably consider an application from the union for recognition if it got itself registered. Gradually it was realized that it was not enough if the employer merely listened to grievances and gave some replies but that it was

necessary for him to negotiate responsibly with the union. The Royal Commission on Labour discussed the question of recognition from this point of view. What benefit would obligatory recognition yield, they argued, if the will to negotiate responsibly was wanting? As the proper spirit for making collective bargaining a success could not be created by compulsion, the Royal Commission was of the view that nothing was to be gained by statutory compulsion in the matter of recognition. And yet this view obviously did not satisfy trade unions which continued to clamour for compulsory recognition. The agitation led eventually to the enactment of the 1947 amending Act.

The Statement of Objects and Reasons attached to the Bill said that it had long been felt that there should be some obligation on the part of employers to recognize trade unions provided they were truly representative, that the Royal Commission had deprecated compulsion in the matter of recognition on the ground that it would not secure genuine and full recognition which the Commission desired, but that the position had not improved in regard to voluntary recognition by employers and compulsion had become necessary. Hence the necessity for the Bill.

The Indian Trade Unions (Amendment) Act, 1947 provided for two important subjects, viz., recognition of trade unions and prohibition of unfair practices. Two small chapters III-A and III-B were devoted to these subjects. The rest of the Act was concerned with definitions, penalties and other incidental matters. For enforcing the provisions relating to recognition, Labour Courts presided over by persons who were, or had been, High Court Judges or District Judges or who were qualified for appointment as High Court Judges were to be set up by the appropriate Government.

Recognition of Trade Unions: The scheme of the Act was that the employer could recognize any trade union voluntarily. There were no restrictions as to the size of the trade union or its representative character. A memorandum of agreement signed by the employer and the officers of the trade union or their authorized representatives was to be presented to the Registrar for recording it in a register. The agreement was revocable by either party on application made to the Registrar. So long as the agreement was in force, the trade union was entitled to all the rights of a recognized trade union. It should particularly be noted that there was no bar to an employer's recognizing more than one trade union in respect of the same category of employees. This meant that an employer could negotiate with a number of unions at the same time and, if so inclined, set up one union against another by negotiating with them on different lines.

If a trade union was not recognized voluntarily, it was entitled to recognition by order of a Labour Court provided it fulfilled certain conditions. Of the six conditions stipulated in section 28-D of the Act, the more important were (*i*) that the union was representative of all the workmen employed by the

employer in the industry or industries concerned, (*ii*) that the rules did not provide for the exclusion from membership of any class of the covered workmen, (*iii*) that the rules provided for the procedure for declaring a strike, and (*iv*) that the rules provided for the holding of a meeting of the executive at least once in every six months. In deciding whether a union was representative of all the workmen employed by the employer in the industry or industries concerned, the Labour Court "shall have regard to, but shall not be bound by, the fact whether the proportion which the number of the workmen referred to in the said clause who are members of the trade union and are not in arrears of their subscription for any period exceeding three months, bears to the total number of such workmen is less, or not less, than such percentage, if any, as may be prescribed in this behalf, either generally, or in respect of any particular locality or any particular employer or class of employers, or any particular industry or class of industries." A trade union which had failed to secure voluntary recognition by an employer within three months of its application could apply in writing to the Labour Court for recognition. If the Labour Court was satisfied that the trade union was fit to be recognized by the employer, it could make an order directing recognition. Thereupon the trade union was entitled to have all the rights of a recognized trade union.

The rights of recognized trade unions were given in section 28-F. The executive of a recognized trade union was entitled to negotiate with employers in respect of matters connected with the employment or non-employment or the terms of employment or the conditions of labour of all or any of its members, and the employer was required to receive and send replies to letters sent by the executive on, and grant interviews to that body regarding, such matters. The executive was also entitled to display notices of the trade union on any premises where its members were employed.

The Registrar or the employer could apply in writing to the Labour Court for withdrawal of the recognition granted by order of the Labour Court on a number of grounds including:

(*i*) that the executive or the members of the trade union had committed any unfair practice within three months prior to the date of the application;

(*ii*) that the trade union had failed to submit returns; and

(*iii*) that the trade union had ceased to be representative of the workmen concerned.

A trade union, the recognition of which was withdrawn, could apply afresh for recognition only after six months from the date of withdrawal of the recognition.

Unfair Practices: Unfair practices by recognized trade unions and employers

were listed in the Act more or less on the lines found in foreign enactments. It would be an unfair practice on the part of a recognized trade union:

(*a*) for a majority of the members of the trade union to take part in an irregular strike;
(*b*) for the executive of the trade union to advise or actively to support or to instigate an irregular strike; and
(*c*) for an officer of the trade union to submit false returns.

Similarly it would be an unfair practice on the part of the employer:

(*a*) to interfere with, restrain, or coerce his workmen in the exercise of their rights to organize, form, join or assist a trade union and to engage in concerted activities for the purpose of mutual aid or protection;
(*b*) to interfere with the formation or administration of any trade union or to contribute financial or other support to it;
(*c*) to discharge, or otherwise discriminate against, any officer of a recognized trade union because of his being such officer;
(*d*) to discharge or otherwise discriminate against any workman because he had made allegations or given evidence in an inquiry or proceeding; and
(*e*) to fail to comply with the provisions relating to the rights of recognized trade unions.

An employer committing an unfair practice was liable to be punished with fine which might extend to one thousand rupees. There was no corresponding punishment for a recognized trade union committing an unfair practice, obviously because of the liability to withdrawal of recognition for commission of an unfair practice by the executive or by the members of the trade union.

Limitations of the Amendment Act of 1947: The rights of recognized trade unions, as laid down in the Act, were no more than the right to negotiate with the employer, to send letters to him, to receive replies, and to seek interviews with the employer. These processes would produce results only in certain circumstances. If an employer is entitled to recognize voluntarily a number of unions or the Labour Court itself can order the recognition of more than one union, it is obvious that no employer is going to take a crowd of weak unions seriously. He can play one against the other and direct their energies towards nullifying one another. The percentages fixed by the Central Government for indicating the representative character of a union varied between 15 and 30 per cent depending on the size of unions. Thus more than one union could have become eligible to be called "representative." Even if a 51 per cent membership for being declared a "representative"

union was considered too high, the law could have said that among unions fulfilling a prescribed membership, only the largest would be entitled to recognition. Failure to introduce the principle of a single bargaining agent was the greatest defect of the legislation. The Act, if enforced, would merely have led to talking but not to responsible bargaining. A trade union could not have become strong unless it was certified as the sole bargaining agent to the exclusion of all other trade unions. There should have been provisions preventing the employer from negotiating and settling demands with any but the most representative union. The Act did nothing either to discourage rival trade unionism or to encourage the principle of one union in one industry or undertaking.

The provisions relating to unfair practices would, however, have helped to build up trade unionism on proper lines. Employers would have refrained from setting up company unions. This is claimed to be one of the serious defects of present-day trade unionism in the country. At the same time employers would have been deterred from taking vindictive action against officers of recognized trade unions. Workers, on the other hand, would have been prevented from resorting to "irregular strikes," which are so rife. On the whole the enforcement of the 1947 Amendment Act would have led to some beneficial results for Indian trade unionism but not to the extent imagined by the Government's critics.

Reasons for Non-enforcement of the Amendment Act of 1947: Official explanations of the reasons why the Act was not brought into force have been vague and inadequate, but a careful examination of the provisions would show where the shoe pinched. The word "industry" was not defined in the 1926 Act, with the result that words such as "trade or industry" or "trade or business" occurring in the definitions of "workmen" and "trade union" would have been assigned their normal meaning, as accepted in common parlance, and not any extended meaning. A trade union then would have been a combination formed for the purpose of regulating the relations between workmen, i.e., workers in trade or industry, and their employers. This position was completely changed with the introduction of a new definition of "industry" in the 1947 Amendment Act. According to this definition, industry means "any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft or industrial occupation or avocation of workmen." This definition of industry, unsatisfactory as it is because of its being tied up with the word "workman" which in turn is tied up with "industry", has been interpreted in very wide terms. In its widest sense, the Trade Unions Act might, because of this definition, have applied not only to unions or associations of civilian employees of the Government but even to the police and the armed forces. That, at any rate, was the apprehension of the Government, notwithstanding the widely-recognized principle that the regal or sovereign functions of Government

cannot be treated as an industry or industrial activity. It was for this reason that a somewhat similar definition of "workman" occurring in the Industrial Disputes Act, 1947, also tied up with "industry", was expressly amended in 1956 so as to exclude from its scope the armed forces subject to the discipline of the Army Act, 1950, the Air Force Act, 1950, and the Navy (Discipline) Act, 1934 and the police, apart from certain categories of managerial, administrative and supervisory staff. Enforcement of the 1947 Act might have enabled all these categories of employees to form trade unions. This, in the case of the armed forces and the police, would inevitably have led to conflict with the special enactments governing their services.

In the case of the civilian employees of the Government too, a number of difficult situations might have arisen. No doubt civilian employees are entitled, under both the Indian Constitution and the I.L.O. Conventions, to form associations or unions, but at the same time it is permissible for the State to impose reasonable restrictions on the exercise of the right in the interests of public order and morality. As will be mentioned in greater detail while discussing the Trade Unions Bill, 1950, the Government felt that trade unions of civil servants should be subject to certain special restrictions. These included the debarring of outsiders from becoming officers of the executive of a trade union consisting wholly or partly of civil servants, the withholding of compulsory recognition from a trade union of civil servants if it did not consist wholly of civil servants or if it was affiliated to a federation to which trade unions of employees other than civil servants were also affiliated and the debarring of all Government employees, whether civil servants or not, from contributing to political funds. It would have been risky to allow trade unions of civil servants to develop on the same lines as trade unions of industrial workers.

There were objections from other quarters also. The Government must have felt that the rules governing the conduct, service, punishments, etc. of Government servants, which are framed under various provisions of the Constitution, might come in conflict with the definition of unfair practices by employers contained in the 1947 Act. For instance, it would be an unfair practice on the part of the employer to interfere with, restrain or coerce his workmen in the exercise of their rights to engage in concerted activities for the purpose of mutual aid or protection. The Government had never admitted the right of civil servants to go on strike. If it enforced this ban, it might have been guilty of an unfair practice under the 1947 Amendment Act. Some of the provisions of the Government Servants Conduct Rules also would have led to the commission of unfair practices. It must have been for these reasons that the Government felt that unless the Trade Unions Act and the Industrial Disputes Act were suitably amended, it was inadvisable to bring the Indian Trade Unions (Amendment) Act, 1947, into force.

Obligations under I.L.O. Convention 98: The non-enforcement of the Indian

Trade Unions (Amendment) Act, 1947 soon brought us in conflict with our obligations under I.L.O. Convention 98: Right to Organize and Collective Bargaining Convention, 1949. Article 1 of that Convention says that workers shall enjoy protection against acts of anti-union discrimination in respect of their employment. The protection is, in particular, directed in respect of acts calculated to (*a*) make the employment of a worker subject to the condition that he shall not join a union or shall relinquish trade union membership, and (*b*) cause the dismissal of, or otherwise prejudice, a worker by reason of union membership or because of participation in union activities outside working hours. These provisions were largely, but not wholly, covered by clauses (a) and (c) of section 28-K of the Trade Unions Amendment Act of 1947 dealing with unfair practices by employers. Article 2 of the Convention lays down that workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other. In particular the establishment of workers' organizations under the domination of employers and the supporting of workers' organizations by financial or other means are prohibited. These very provisions were contained in clause (b) of section 28-K of the Amendment Act of 1947. The other provisions of the Convention are also in line with the spirit of the Act of 1947. It was, therefore, imperative that if India wanted to give effect to the I.L.O. Convention, she overcome her internal difficulties which came in the way of a legislation similar to the Amendment Act of 1947.

In evolving any legislation which would make the Trade Unions Act of 1926 respond to the requirements of the post-war era, two other recent developments had to be borne in mind. One was the passing by the I.L.O. of Convention No. 87: Freedom of Association and Protection of the Right to Organize Convention, 1948 and the other the enactment of the Indian Constitution which provided for certain fundamental rights in regard to freedom of association. Convention No. 87 lays down that "workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization." Other articles give full freedom to workers' organizations to draw up their constitutions, to elect representatives, to organize their activities, to establish and join federations, etc. Article 8 of the Convention, which is a very important, if somewhat obscure, provision lays down first that workers and employers and their respective organizations, like all others, shall respect the law of the land and then proceeds to say that "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention." Reference has already been made to the provision in the Indian Constitution that all citizens "shall have the right" "to form associations or unions." It is, however, laid down that this provision shall not "affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of public order or

morality, reasonable restriction on the exercise of the right."

When Convention No. 87 was received by the Government of India for ratification, doubts were expressed whether some of the provisions of the Indian Trade Unions Act, 1926 were consistent with the terms of the Convention or whether they would have to be repealed. If workers' organizations were entitled to draw up their constitutions and rules and to organize their administration and activities without any interference from any source, would, for instance, the restriction on the number of outsiders on executives contained in section 22 of the Indian Act be permissible? Or again, would the various conditions subject to which registration may be granted or cancelled be tolerated by the Convention? The Trade Unions Act imposed several restrictions, not on the formation of trade unions, but on the registration of trade unions which alone would enable them to function effectively and without fear of being subjected to criminal and civil action. The view held in the office of the I.L.O. regarding restrictive national laws seems to be that the provisions contained in national laws which are aimed at ensuring the healthy growth of trade unions would not be inconsistent with the State's obligations under the Convention.

The anxiety of the Government to bring into force either the Trade Unions (Amendment) Act, 1947 or some similar legislative provision incorporated elsewhere and to ratify I.L.O. Conventions 87 and 98, without such ratification having, in any way, undesirable repercussions on the civil services of the country led to the drawing up of two important bills by the Government, viz., the Labour Relations Bill, 1950 and the Trade Unions Bill, 1950. Both the Bills were considered by Select Committees of the Legislature, but as they proved to be highly controversial, the Government must have thought it prudent not to proceed with them. Finally when the legislature was dissolved in 1952 and replaced by the newly-elected Parliament, all the old pending Bills lapsed and were conveniently forgotten.

Though the Bills became infructuous, they contained several worth-while ideas which would repay some attention. In certain respects, particularly in the matter of collective bargaining, the Bills were complementary, provisions relating to the certification of the bargaining agent being included in the Labour Relations Bill and not in the Trade Unions Bill. The Labour Relations Bill will be examined in a later chapter; for the present we shall confine our attention to the special features of the Trade Unions Bill, 1950.

THE TRADE UNIONS BILL, 1950

The preamble to the Bill declared it to be a bill to provide for the registration and recognition of trade unions and in certain respects to define the law relating to registered and recognized trade unions and to certain unfair practices by employers and recognized trade unions. Thus it combined the functions of the 1926 Act and of the 1947 Amendment Act. The Bill

contained a number of new features, some of which will be noticed below.

"Appropriate Government": In the 1926 Act, the Local Government or, later on, the Provincial Government was the authority referred to as the Government. It was by the Government of India (Adaptation of Indian Laws) Order 1937 that the concept of the "appropriate government" was introduced into the law for the first time. The appropriate government meant, in relation to trade unions whose objects were not confined to one province, the Central Government, and in relation to other trade unions, the Provincial Government. This division of jurisdiction must have been a difficult one to work, for there were large numbers of trade unions which had spread their activities beyond the borders of their parent province. The new Bill, while retaining the formula evolved in 1937, also brought within the central sphere all unions, of which not less than 50 per cent of the members were persons employed in railways, major ports, inland or coastal transport extending to more than one State, mines, oilfields, controlled industries, banking and insurance companies having branches in more than one State, corporations established by the Central Government, etc. This provision, if implemented, would have brought within the administrative responsibility of the Central Government a very large number of trade unions. It is extremely doubtful whether such over-centralization in the matter of trade union administration had any particular merit. The prevailing enthusiasm for coordination, at the hands of the Central Government, of activities extending over a number of States must have been responsible for this widening of the Central Government's jurisdiction. Another, and perhaps even more compelling, reason for this increased centralization was the keeping of the industrial relations in this vast field under the Central Government's jurisdiction in the Labour Relations Bill. The sharing of jurisdiction between the Central and State Governments had to be the same under both the laws.

Provisions Relating to Civil Servants: Special provisions relating to trade unions of civil servants were one of the distinctive features of the Bill. The Statement of Objects and Reasons had this to say about unions of civil servants: "Civil servants hold a key position in the administration of any country and particularly of a country which has started on its career of independence amidst such economic and other difficulties as we find in India today. While their very position entitles them to every safeguard necessary for their well-being and progress, they should not be exposed to the temptation of resorting to methods which are available to industrial labour in every country. With this object in view, the Bill provides that a trade union of civil servants will not be entitled to compulsory recognition by the appropriate government if it does not consist wholly of civil servants or if it is affiliated to a federation, to which trade unions of persons other than civil servants are also affiliated." There were also certain other provisions relating to civil

servants. A trade union consisting wholly or partly of civil servants was prohibited from participating in any form of political activity. A member who took part in such activity was to be struck off membership. If the trade union refused or failed to remove the offending member from its rolls, it was liable to have its registration suspended or cancelled. A trade union consisting wholly of government employees, whether civil servants or not, was debarred from constituting a political fund. Where a trade union consisted partly of government employees and partly of other employees, no contribution to the political fund was to be levied from, or made by, government employees. Again, where a trade union consisted wholly or partly of civil servants, no outsider, i.e., one who was not an ordinary member, was entitled to be an officer of that union. The whole of the chapter relating to unfair practices was made inapplicable to trade unions of civil servants.

With such very stringent rules which had the effect of isolating civil servants from other workers, the Government must have felt it safe to extend to civil servants the freedom of association guaranteed by the I.L.O. Conventions and the Indian Constitution. The very fact that civil servants could form trade unions was a great advance over ideas previously prevalent.

The expression "civil servant" was defined very elaborately. Primarily it meant a person who was a member of a civil service of the Union or of an all India Service or of a Civil Service of a State or one who had any civil post under the Union or a State. It then excluded from the scope of the definition persons who were paid from contingencies and those who were employed either as a non-gazetted servant or as a gazetted servant drawing a basic pay of not more than Rs. 200 in a number of establishments owned or managed by the Central Government or a State Government such as the railways and other forms of transport, ports, docks, wharves or jetties, telegraph, telephone, wireless telegraph and broadcasting establishments, mints, printing presses, ordnance factories, public works establishments, irrigation and electric power establishments, plantations, mines and factories. Notwithstanding the treating of such employees as non-civil servants, i.e., as, say, industrial employees, employees in the offices of the Railway Board or of General Managers of Railways or of other transport establishments, employees in the offices of the Director-General of Posts and Telegraphs, and employees in a number of similar administrative offices were treated as civil servants.

The Conditions for Registration of Trade Unions: The conditions prescribed in the Indian Trade Unions Act, 1926 for registration were considerably tightened. The rules of the union had now to mention the rate of subscription payable by members which, however, was not to be less than two annas per month. The rules were also required to lay down the procedure for taking disciplinary action against members going on strike without the sanction of the executive, the procedure for taking disciplinary action against officers who

contravened the provisions of the Act or the rules of the union, and the ban on participation in political activities if the union contained civil servants as members.

Suspension or Cancellation of Registration: Here again the provisions were made more stringent than in the 1926 Act. The certificate of registration of a trade union could, under the provisions of the Bill, be suspended or cancelled (*i*) if the trade union refused or failed to comply with any term of an order or award made by a court or tribunal or of a settlement arrived at or of a collective agreement concluded, or (*ii*) if the trade union, consisting wholly or partly of civil servants, refused or failed to remove the name of any member who had taken part in any political activity. Where the grounds of suspension or cancellation were removed within two months of notice, no further steps could be taken for suspension or cancellation of the certificate of registration.

The provision that the registration of a union could be suspended or cancelled for refusal or failure to comply with the terms of an order or award made by a court or tribunal was clearly an extreme measure. There are, and should be, other methods of compulsion to get binding orders and awards implemented. To threaten cancellation of registration is to force the union into submission by threats of undermining its legal existence. It is doubtful whether such a provision could be deemed to be in accord with the requirements of Convention No. 87 of the I.L.O.

Immunity from Civil Suit in Certain Cases: It will be remembered that when clause 18 of the Trade Unions Bill, 1926 was under discussion, several members suggested deletion of the words "to which a member of the trade union is a party" qualifying the words "trade dispute" on the ground that the retention of the words would affect the legality of sympathetic strikes. The objection was then sought to be overcome by saying that the definition of the term "workmen" permitted workmen to raise industrial disputes even if they themselves were not in the employ of the employer with whom the trade dispute had arisen. The Select Committee examining the 1950 Bill deleted the words objected to as being unnecessary.

Outsiders: The number of outsiders permitted to become officers of a trade union was restricted to four or one-fourth of the total number of members of the executive. Thus the proportion of outsiders was sought to be reduced from half to one-fourth of the total number of members of the executive.

Recognition: While the 1947 Amendment Act permitted more than one recognized union only by implication, the Trade Unions Bill, 1950, laid down clearly that "an employer may recognize one or more registered trade unions." Thus recognition was immediately reduced to a mere talking relationship.

As in the case of civil servants, a trade union consisting partly of supervisors and partly of other employees or partly of the watch and ward staff and partly of other employees was debarred from recognition by the employer. Similarly, a trade union could not be recognized by an employer in any hospital or educational institution if it did not consist wholly of employees of hospitals or educational institutions. In one respect the Bill was an improvement on the 1947 Amendment Act. It laid down that where application for recognition by order of a Labour Court was made by more than one registered trade union, the trade union having the largest membership was to have preference over other trade unions. But so long as the employer was permitted to recognize voluntarily more than one registered trade union, the restriction on recognition by order of a Labour Court was of limited value. The law was doing little towards encouraging the concept of one representative union to the exclusion of all others. As to the "representative" character of the trade union which would justify recognition, which obviously is the crux of the whole matter, this was left to the rules.

The rights of recognized trade unions were sought to be expanded by a provision permitting the executive of a recognized trade union or its officers to collect trade union dues on the premises where wages were paid. The executive was also permitted to hold discussions on the premises of the establishment with the employees concerned for the purpose of the prevention or settlement of a labour dispute and also to inspect any place in the establishment where members of the trade union were employed. The provision permitting collection of membership dues would have gone a long way towards improving the poor finances of trade unions.

Unfair Practices: The provisions relating to unfair practices included in the Bill were generally the same as those contained in the 1947 Amendment Act except for one important addition. Refusal to enter into negotiations with the other party or to bargain collectively as provided for in the Labour Relations Bill was to be an unfair practice on the part of both unions and employers.

Minutes of Dissent. There were three minutes of dissent appended to the report of the Select Committee. One important point made out was that the provisions relating to unions of civil servants had the effect of denying to civil servants the Right of Association and the Right to Organize. "The civil servant does not cease to be a citizen, or a human being, solemnly assured of certain basic rights under the Constitution as well as by international convention, merely because he accepts employment under Government, whether at the Centre or in the States; or even in a large variety of public bodies, local authorities or statutory corporations. To deny or restrict such a basic right by local legislation is, therefore, against the very foundation of labour organization." So said one member.

In contrast, another member suggested that workers in munitions and other

factories run by the Defence Department should not be brought under the trade unions law and that they should be specifically excluded from the purview of the Bill.

Other objections contained in the minutes of dissent related to the restriction placed on the number of outsiders on executives, the need for making political levy compulsory, and the cumbrous procedure for securing the registration of a trade union.

A View on the Trade Unions Bill: There is no doubt that the Trade Unions Bill appears to have been drafted with a view to enabling the Government to have close control over the affairs of trade unions. The difficulty of deciding whether or not civil servants should be brought within the scope of the trade unions law seems to have landed the Government in a dilemma. Ideas about Freedom of Association and Fundamental Rights must have come in sharp conflict with the demands of public policy which required the insulation of the civil services of the country from agitational methods. In the Labour Relations Bill, the term "employee" did not include civil servants, with the result that civil servants were not entitled to take advantage of any of the processes of conciliation, arbitration, adjudication, etc. available in that Bill. The necessary implication was that they were not entitled to strike. If then civil servants could not join trade unions of non-civil servants or get their trade union affiliated to a central organization of labour, if they could not have outsiders on their executives when other unions could, if they could not have any contact with political parties—if, in fact, they were to remain in a walled enclosure of their own unaffected by the course of events outside, that was not precisely the way of ensuring the Right of Association so elaborately and meticulously laid down in weighty national and international documents. It is of course an entirely different matter for unions of civil servants to have all or most of the usual rights and yet for them to exercise restraint in resorting to measures which would occur quite naturally to a trade union of industrial workers. In the U.K., for instance, there is no bar to civil servants joining any trade union or getting their union affiliated to the British Trades Union Congress. In fact, there is no bar even to their joining a political party so long as they do not embarrass the Government by their activities. It is necessary for civil servants in India also to evolve a Code of Conduct in these matters. One cannot solve the problem by merely laying down by statute either that they should not join trade unions or that if they do join, they should remain completely stripped of all powers stemming from combination. It should be possible for us to evolve a system of mutual consultation and adjustment which can produce much of the results of collective bargaining without its leading to violent conflicts. Strikes by civil servants must, no doubt, be avoided, but this cannot be done unless the cause of the unrest is removed. The responsibilities of both the Government and its employees are infinitely more than those of private parties, but the question

naire consisting of some 115 questions. Of these 20 questions dealt specifically with the problems of trade unions. As this was the last comprehensive consultation with all concerned, it might be useful to consider what their opinions were on some of the major questions of policy. Ideas about trade union and industrial relations policies suited to the conditions prevailing in the country are still in the melting pot, and consequently current and developing thought on these subjects is at least as important as the way in which these matters are now being handled. That is the justification for a somewhat elaborate survey of the opinions expressed by various parties.

On the need to amend the Trade Unions Act of 1926, the opinion was practically unanimous that the time had come for a major revision of the law. The Indian National Trade Union Congress was of the view that the new law should provide for the recognition of unions "as a proper agency for collective bargaining" and that the law should in general assist in the development of a single strong trade union in an undertaking or industry in a local area in place of the numerous small unions that existed at present. Trade unions, according to the Indian National Trade Union Congress, should have specific rights such as the right to collect subscriptions at the place of employment and the right to meet workers with a view to discussing their problems on the employer's premises. While there was no objection to the working of trade unions being periodically examined by a government agency, the Government should open training classes for trade union officials. The Trade Unions Bill, 1950 (clause 15) had authorized the appropriate Government to appoint Inspectors for inspecting registered trade unions and for exercising such other functions as might be prescribed. It is obvious that the Indian National Trade Union Congress might not have objected to this proposal. The All India Trade Union Congress too favoured legislation to amend the existing law. It pointed out that unions had sometimes to wait for months at a stretch to secure registration and that some time-limit for registration should be laid down. Amalgamation of trade unions in the various units of an industry into an industrial union was, under the existing law, beset with numerous difficulties. Special provisions were, therefore, necessary for the purpose. The Hind Mazdoor Sabha did not consider any radical revision of the law necessary, while the United Trade Union Congress favoured revision particularly to provide for recognition and for dealing with unfair practices.

Other trade unions, employers' organizations, and State Governments made a number of suggestions for amendment of the Act. While the suggestions on specific subjects will be mentioned at the appropriate places, there were a number of general observations on questions of broad policy which might be noticed here. The All-India Manufacturers' Organization said that the object should be to develop a healthy trade union movement free from power politics and foreign influence and that the rules for registration should be made more stringent. A minimum qualification of 33 1/3 per cent member-

ship in an industry in a region should be laid down for recognition of a representative union. The present complete immunity from prosecution accorded to union office-bearers should be restricted. Special rules should be laid down for trade unions in public utility undertakings, the rights and privileges of which could be curtailed in an emergency. The Indian Colliery Owners' Association and the Indian Mining Federation also felt that the immunity from criminal prosecution and civil liability was excessive and was being abused. The Employers' Federation of Southern India suggested that there should be provision for cancellation of the registration of a union guilty of an illegal strike. The Upper India Chamber of Commerce said that while the principle of "closed shop" should not be enforced, there should be provision for making it impossible for more than one union to represent the same class of workers in a factory. The General Motors India Limited gave a list of wrong actions on the part of a union which would justify cancellation of its registration.

The Union of Posts and Telegraphs workers suggested that where there were two or more unions in an undertaking, "they should be directed either to merge themselves into a single union or to dissolve themselves and establish sectional unions compulsorily federated at all levels." It also said that there should be only one federation of unions in any one industry or department. A number of unions, not being unions affiliated to the Indian National Trade Union Congress, suggested repeal of sections 16 and 22 of the Trade Unions Act relating to political funds and outsiders. They said that these were fundamental rights of unions which should not be controlled by anybody other than the unions themselves. The National Textile Staff Association, Jalgaon, made the suggestion that "there must be a compulsion on employees to become members of any trade union registered under the Trade Unions Act" and that the choice of the union could be left to the employee. The U.P. Bank Employees' Union made the novel suggestion that "any trade union which is not capable of taking strike ballots and giving a call of strike if the result is favourable shall be a mere association or society distinct from a trade union." This union must obviously have been fed up with the sight of weak organizations calling themselves by high-sounding names when they were quite incapable of inspiring any sort of respect or awe in the mind of the employer.

The Indian Institute of Personnel Management felt that trade unions controlled by workers themselves were often more realistic in their approach to industrial relations problems than those controlled by outsiders. This justified gradual reduction in the number of outsiders.

The State Governments were generally in favour of greater control over the registration and functioning of trade unions. Cancellation of registration was recommended for a variety of reasons. The Bihar Government suggested that where a union already existed, a second union should be registered only if it represented at least 10 per cent of the category of employees in that establishment.

On the specific question whether the rules of a trade union should provide for (*a*) the rate of subscription, (*b*) the circumstances in which a member may be struck off the list of members, and (*c*) disciplinary action against members for resorting to strikes without the sanction of the executive, the All India Trade Union Congress and a number of unions pointed out that these were matters for the union concerned to decide and that "the State should not be allowed to dictate and disturb the autonomy of unions which are in essence democratic mass organizations of the working class formed on a voluntary basis." There was one opinion that it was not necessary for the rules to provide for the rate of subscription as "a trade union can be run on no fee, by means of donations and collections from entertainments." It is to be feared that several trade unions depend as much on donations as on membership fees for meeting their expenditure. This is certainly not a healthy sign.

To the question whether a trade union consisting wholly or partly of civil servants should be denied registration if it did not prohibit its members from participating directly or indirectly in political activities, the answer of the Indian National Trade Union Congress was "yes" while that of the other three central organizations of labour was "no." The All India Trade Union Congress mentioned that all citizens without exception had a right to participate in political activities. The Hind Mazdoor Sabha pointed out that in Great Britain a trade union of civil servants could get itself affiliated to the Trades Union Congress "which is a semi-political body." The Central Excise Employees' Union said that they should have a right collectively to express their views on political issues and that if that was not to be allowed, they should be debarred from voting in elections too. The U.P. Government made the suggestion that in the case of trade unions of civil servants, recognition should precede registration and that those that contravened the Government Servants' Conduct Rules should be denied recognition and registration.

As regards the question whether trade unions consisting wholly of Government employees—civil servants or industrial employees—should be permitted to maintain a separate fund for political purposes, all the four central organizations of labour were in favour of permitting such a fund. The Indian National Trade Union Congress was inclined to disallow such a fund in the case of civil servants but not in the case of the industrial employees of Government. The other central organizations did not attempt to make this distinction. Of the other unions, some said "yes" and some "no." Employers' organizations and State Governments were generally not in favour of allowing such a fund. The Bombay Government said that Government servants should have nothing to do with political activities. The Bihar and Rajasthan Governments were of the opinion that a political fund could be allowed in the case of industrial employees of the Government.

On the important question of outsiders on the executives of unions, there were all shades of opinion. The All India Trade Union Congress and a

number of important unions were of the opinion that there should be no restrictions on the number of outsiders on executives, that this was a matter entirely for trade unions themselves to decide and that section 22 of the Indian Trade Unions Act, 1926 should be repealed. On the other hand a number of employers' organizations, such as the Bengal Millowners' Association, the Indian Mining Federation, the Indian Colliery Owners' Association, the Employers' Association of Northern India, the Indian Banks' Association, the Bombay Exchange Banks' Association, several chambers of commerce, etc. were of the opinion that outsiders should be excluded altogether from executives. Among State Governments, the Madras Government was in favour of total exclusion of outsiders from executives. The bulk of the replies, however, oscillated between these two extremes. The majority of them generally recognized the point that it would be an ideal arrangement if workers could manage their own affairs, but they conceded that for various reasons Indian workers were not, as yet, capable of looking after themselves. Outsiders would, therefore, have to be continued for some time more. If outsiders were prohibited altogether, workers managing their unions would be subjected to many handicaps, including threats of victimization. Most employers treated worker representatives as subordinates and did not negotiate with them on equal terms. None of the answers ventured to say how long outsiders would be needed or when trade unions were likely to become strong enough to withstand management pressures. As regards the proportion of outsiders on executives, views varied. The maximum proportion recommended varied between one-sixth and one-half of the strength of the executive. Besides, several unions would put a limit on the number of outsiders. This varied generally from one to four. The Employers' Federation of Southern India made the suggestion that two outsiders could be permitted on the executive of a newly-formed trade union but that after five years of the existence of the union, the outsiders should disappear completely. None of the replies attempted to examine whether there had been any change in this respect since 1926 when identically the same arguments had been urged in support of the retention of outsiders on executives; nor was there any attempt to examine the point raised during the debate of the Indian Trade Unions Bill, 1926 that there were only one or two effective outsiders on each executive and that the proportion or number of outsiders was of little consequence. On the particular point whether outsiders should be allowed in unions of civil servants or not, workers' organizations were generally in favour of allowing them while employers' organizations were against such a course. State Governments agreed with the latter view.

Another important question posed was whether an employer should have the right to recognize any number of unions or only the most representative one. The Indian National Trade Union Congress said that the employer should recognize only the most representative union as otherwise "there will be a tendency on the part of an employer or his agents to play one union

against the other." The Hind Mazdoor Sabha was of the opinion that the employer should have the right to recognize more than one union so long as a union fulfilled the requirement of minimum percentage of membership. The All India Trade Union Congress suggested that all unions in an industry or concern which were not company unions should be recognized as "to recognize or not is not a right of the employer." Thus the very purpose or meaning of "recognition" appears to have been lost sight of by labour organizations themselves who were the parties most affected by the policy on the subject. The bulk of the replies, however, supported the standpoint of the Indian National Trade Union Congress, namely, that only one union should be recognized and that the employer should not be permitted to recognize more than one. Employers' organizations also supported this point of view. While most of the associations and unions said that the employer should be permitted to recognize only one union, a few, e.g., the Indian Jute Mills' Association, stated that while the employer should not be compelled to recognize more than one union, he should have the right to recognize more than one union if he so desired. To this view, however, there was no substantial support. The State Governments were in favour of recognizing only the most representative union. The Madras Government suggested that only a union with 60 per cent of the workers on its rolls should be recognized! The Bihar Government would agree to the recognition of a union which represented the majority of the workers. All other Governments supported the most representative union, irrespective of its membership.

On the question whether there should be any statutory provision for the compulsory recognition of trade unions, opinion was divided. The Indian National Trade Union Congress said that the general opinion was against compulsory recognition and that the representative character of a union must itself be the compulsion in the eyes of the employer. The other three central organizations of labour and the majority of other unions were in favour of statutory compulsion. Opinion among employers was even more divided. A few felt that it was not necessary to make any statutory provision for the purpose. Others felt that it was useful to have such a provision. State Governments were generally in favour of compulsion, as obviously one of the matters which gave them the most trouble would thereby be taken off their shoulders.

The question whether trade unions having civil servants as members should be denied recognition if they did not consist wholly of civil servants or if such a trade union was affiliated to a federation of trade unions to which a trade union consisting of members other than civil servants was affiliated also drew divided opinion. The Indian National Trade Union Congress replied in the affirmative to the first part of the question while the other three central organizations of labour and many other unions answered in the negative. The Indian National Trade Union Congress, however, said that such a union could be permitted to affiliate itself with any federation or national organization

of labour without any restriction. State Governments who presumably were the most interested in this question were with one exception in favour of denying recognition if the stipulated conditions, as suggested in the question, were not fulfilled.

Regarding the rights of recognized unions, the lists furnished by most of the unions included the following:

(*i*) the right to enroll members and to collect subscriptions and other levies on the premises of the employer;
(*ii*) the right of negotiation with the employer;
(*iii*) the right of collective bargaining;
(*iv*) the right of holding meetings on the premises of the undertaking;
(*v*) the right of investigating grievances within the establishment;
(*vi*) the right of maintaining notice boards on the premises of the establishment;
(*vii*) the right of visiting the work room or any other part of the establishment in connection with a dispute;
(*viii*) the right to secure leave with pay to attend meetings of the union;
(*ix*) the right to distribute leaflets and to display posters inside the undertaking; and
(*x*) the right to secure office accommodation on the premises.

Barring one union, none of the workers' organizations asked for "union shop", i.e., for making it obligatory for a worker to join the recognized union within a prescribed period as a condition of continued employment. Again only one union wanted "check-off," i.e., asking the employer to deduct subscriptions from the wages of members and to remit the amount to the union. There was, of course, no question of demanding "closed shop," i.e., making all further recruitments of workers only from among union members. However, the Indian National Trade Union Congress wanted "in new recruitment the right to ask the employers to give preference to unemployed members of the union." One union suggested that a person—apparently a worker of the establishment—elected as secretary of a union should be considered as on foreign service for the period he remained as secretary or for a period of three years, whichever was less. This was apparently an attempt to secure inside leadership in a cautious way. Employers' organizations and State Governments were content to treat the rights of recognized unions metioned in the 1947 Amendment Act and in the Trade Unions Bill, 1950, as being sufficient. They would not agree to any undue elaboration of those rights.

It is surprising that organizations of workers in this country should attach so little importance to what are considered indispensable aids to unionism in other countries. In the United States, for instance, 80 per cent[3] of the 18

[3] Bloom and Northrup: *Economics of Labor Relations*, 1961, p. 227.

million employees covered by union agreements are working under some form of union security provision. According to U.S. Department of Labor Statistics, 74 per cent of the employees covered by union agreements were under union shop (which included also closed shop) arrangements and 7 per cent under maintenance of membership arrangements. In the United States the closed or union shop became necessary primarily to overcome employer opposition to union recognition. Workers were afraid of becoming members if they were not compelled to do so under the protection of a union security clause. In England union security provisions did not assume the same importance, for unions found it possible to evolve suitable sanctions, social and otherwise, against workers refusing to become members. It is obvious that under Indian conditions if responsible trade unionism gains ground, it will benefit considerably by suitable union security provisions.

From a perusal of the opinions received, it would appear that these opinions were of a diversified character and that even the viewpoint of labour was not a united one. If there are as many opinions as there are trade unions, it is obvious that they would count for little. Disunity among the ranks of labour was obvious from the replies. On the other hand there was far greater agreement among employers regarding their standpoint. It was clear that the provisions which had been incorporated in the Trade Unions Bill, 1950, objectionable as they were in several respects, were backed to a great extent by the replies received to the questionnaire. There was, of course, no unanimity of opinion on any subject, but the views incorporated in the Bill on a number of points derived substantial support from the views expressed by the various parties in replies to the questionnaire. Unfortunately there was little evidence of any fresh or bold thinking in respect of the problems facing the trade union movement.

If, therefore, Government had wanted to proceed with the Bill of 1950, with suitable modifications, there would presumably have been no great opposition.

THE PRESENT STATE OF TRADE UNIONISM

Unhealthy Growth: The period subsequent to the attainment of independence by the country witnessed a phenomenal growth of the trade union movement as may be seen from the statement appended below:

REGISTERED TRADE UNIONS AND THEIR MEMBERSHIP

Year	*Number of registered trade unions*	*Number furnishing returns*	*Membership of unions submitting returns*	*Average membership per union*
1942–47	1048	642	9,10,329	1418
1947–48	2766	1620	16,62,929	1026
1949–50	3522	1919	18,21,172	949
1950–51	3766	2002	17,56,971	877
1951–52	4623	2556	19,96,311	761
1952–53	4934	2718	20,99,000	772
1953–54	6029	3295	21,12,695	641
1954–55	6658	3545	21,70,000	612
1955–56	8095	4006	22,74,732	568
1956–57	8554	4399	23,76,762	540
1957–58	10,045	5520	30,15,052	546
1958–59	10,228	6040	36,47,000	604
1959–60	10,811	6588	39,23,000	596
1960–61	11,175	6829	37,82,000	554

SOURCE: *Trade Unions*, 1954-55 and 1955-56, p. 23
Indian Labour Year Book, 1962, p. 87.

The figures for and up to the year 1950-51 relate to Part A States and some Part C States, but the figures for 1951-52 and subsequently relate to the entire country.

The year 1947-48, which included part of the first year of independence, witnessed a sudden and substantial spurt in trade union organization and membership. In fact the contrast is even greater when it is realized that the total membership of unions submitting returns during the quinquennium 1942-47 related to undivided India while the figure for 1947-48 related only to Part A and Part C states of the country after partition. It is clear, therefore, that there were energetic forces at work for the expansion of union memberships, but even so the 100 per cent expansion secured within the short space of five years is enough to intrigue even the most confirmed optimist. It is possible that membership drives brought in many signatures but not stable or effective memberships. That is why in spite of every possible care and

attention, the Chief Labour Commissioner has not found it possible to certify more than 50-60 per cent of the claimed memberships even in recent years. There are, therefore, grounds for the suspicion that the total membership figures do not represent the stable fee-paying membership.

The fact that every year only half the number of registered unions submit returns leads one to the suspicion that the defaulters, or the bulk of them, are not genuine trade unions. The Director of the Labour Bureau says in the publication on trade unions for 1954-55 and 1955-56 that "during the last three years there has been a gradual deterioration in the proportion of unions submitting returns to the total number of registered unions in almost all the States." Quite a number of trade unions, 408 in 1954-55 and 460 in 1955-56, have had their registrations cancelled for failure to submit annual returns. It is obvious that on this overgrown tree there is much dead wood.

An even more disquieting feature of the recent trade union expansion has been the proliferation of small unions. The average membership per union was 1,418 during the quinquennium 1942-47, but it has since steadily dropped to less than 600. This could have happened only by the creation of very small unions with memberships considerably below the average. A statement showing the frequency distribution of trade unions is appended:

Membership	*Unions*						*Percentage of membership*		
	Number			*Percentage*					
	1953-54	1954-55	1955-56	1953-54	1954-55	1955-56	1953-54	1954-55	1955-56
Below 50	617	688	699	18·7	19·4	21·4	0·9	1·0	1·2
50—99	620	738	619	18·8	20·8	18·9	2·1	2·1	2·3
100—299	993	1099	982	30·2	31·0	30·0	8·4	8·7	10·5
300—499	335	318	317	10·2	9·0	9·7	6·2	5·7	6·2
500—999	366	320	306	11·1	9·0	9·4	13·1	10·4	12·5
1000—1999	198	199	204	6·0	5·6	6·2	12·8	12·7	13·5
2000—4999	102	127	87	3·1	3·6	2·7	14·6	16·3	14·2
5000—9999	39	32	28	1·2	0·9	0·9	12·1	13·6	9·6
10,000—19,999	11	11	11	0·3	0·3	0·3	7·3	9·1	7·4
20,000 & over	14	13	16	0·4	0·4	0·5	22·5	20·4	22·5
Total	3295	3545	3260	100	100	100	100	100	100

SOURCE: *Trade Unions*, 1954-55 and 1955-56, p. 25.

Nearly two-thirds of the total number of trade unions have memberships below 300, but they account for only some 12 per cent of the total membership. Unions with a membership of less than 500 accounted for 80.2 per cent of all the unions and a membership of 17.5 per cent of the total in 1954-55. The corresponding figures for 1955-56 were 80 and 20.2. The total number of unions with a membership of 10,000 or more was 24 in 1954-55 and these

accounted for 0.67 per cent of the total number of unions and 29.5 per cent of the total membership. In 1955-56, 27 unions with a membership of over 10,000 accounted for 0.82 per cent of unions and 30 per cent of the total membership. These figures go to show that the smaller unions predominate. This, to a certain extent, is true of unions in U.K. also where in 1955 unions with a membership of less than 500 accounted for 45.4 per cent of the total number of unions and 0.6 per cent of the total membership and unions with a membership of 10,000 or more accounted for 13.7 per cent of the total number of unions and 92.3 per cent of the total membership. The main difference between India and U.K. is that we have a larger proportion of the smaller unions than U.K., i.e., a much smaller proportion of the larger unions than U.K.

What should, however, really cause us apprehension is not the figures themselves, though these are important, but the trend. Let us consider the following figures of trade union membership in the United Kingdom over a number of years:

Year	*Number of trade unions at the end of the year*	*Total membership (Thousands)*
1896	1,358	1,608
1906	1,282	2,210
1914	1,260	4,145
1919	1,360	7,926
1920	1,384	8,348
1930	1,121	4,842
1941	996	7,165
1947	734	9,145
1950	709	9,242
1951	704	9,480

SOURCE: *U. K. Industrial Relations Handbook*, 1953, p. 9.

They show a large measure of consolidation of the trade union movement. Against 1,358 unions representing a membership of 1.6 millions in 1896, there were 704 unions representing a membership of 9.48 millions in 1951. Thus while the number of trade unions became reduced to about 52 per cent of that of 1896, the total membership shot up to about 600 per cent.

Unfortunately, the reverse has been the case in India. Between 1947 and 1957, the number of unions submitting returns increased from 642 to 5,520, i.e., some ninefold, while the corresponding membership went up from about 9,00,000 to about 30,00,000, i.e., by some 330 per cent. That was why the average membership per union fell from 1418 to less than 600. Our trade union movement is subjecting itself to vivisection at a rate that must be truly alarming.

Extent of Trade Unionism: The percentage of trade union members to the total number of workers, called the unionization ratio, varied in the more important industries from 19 to 61.8 per cent in 1954-55 and from 13.3 to 64.4 per cent in 1955-56:

PERCENTAGE OF TRADE UNION MEMBERS TO AVERAGE DAILY EMPLOYMENT

Industry	1954-55	1955-56
1. Railways	19·5	13·3
2. Coal	39·6	34·3
3. Plantations	19·0	24·7
4. Textiles (all)	38·8	35·3
,, (cotton)	36·9	29·5
5. Basic metals	61·8	64·4
6. Food, beverages and tobacco	34·8	30·4
7. Chemicals and chemical products	39·3	34·6
8. Printing, publishing and allied trades	32·6	37·4
9. Paper and paper products	46·3	26·3

These percentages compare favourably with those of some highly-industrialized states. In the U.S.A. the unionization ratio was 25 per cent in 1954. In Japan the ratios were 40.2 per cent in 1953, 38.8 per cent in 1954 and 38.7 per cent in 1955. Some of the figures mentioned above are interesting. In railways the unionization ratio is as low as 13.3 per cent and yet it is in the railways that powerful federations have existed for a long time. In plantations sustained drives for unionization were held only in recent years. That may account for its low ratio. One might have expected better of cotton textiles as trade unions have been quite strong in textiles for a long time. At the same time one is pleasantly surprised by the ratio for coal where labour is largely unstable and unionization drives are of recent origin.

It may broadly be said that the rate of unionization in India is not inadequate but that far too many unions, which are small and ineffective, have been formed. It is this diffusion of strength that is responsible for the weakness of the trade union movement and not the basic inadequacy of numbers.

Finances: The income and expenditure of registered trade unions of workers during the period 1947-48 to 1958-59 are given in table on p. 167.

The average income (and necessarily expenditure) per trade union steadily went down between 1948-49 and 1953-54. In 1954-55 there was practically no change in the average income while in 1955-56 it went up somewhat, only to come down again in 1956-57. The tendency for trade unions to grow smaller and smaller in size is obviously one of the reasons for the decreasing trend in the average income.

More significant than the reduction in the average annual income of a

Year	No. of unions submitting returns	Income	Expenditure	Average income per trade union
		Rs.	Rs.	Rs.
1947–48	1580	36,88,990	29,49,099	2,335
1948–49	1813	43,11,819	34,99,197	2,378
1949–50	1897	44,38,989	37,44,429	2,340
1950–51	1976	44,56,139	39,43,140	2,255
1951–52	2509	50,84,401	45,31,626	2,026
1952–53	2690	52,05,200	45,43,249	1,935
1953–54	3238	59,75,639	52,16,571	1,845
1954–55	3535	66,31,373	57,19,244	1,876
1955–56	3970	82,93,600	65,05,530	2,090
1956–57	4390	80,16,623	71,81,322	1,826
1957–58	5470	102,88,150	92,61,689	1,881
1958–59	5942	124,91,800	116,55,185	2,102

SOURCE : *Indian Labour Statistics*, 1961, p. 126.

union in money terms is the fact that this reduction has taken place during a period when the money earnings of almost all categories of workers—factory workers, mine workers, plantation workers, etc.—went up considerably as the following figures show:

AVERAGE MONEY EARNINGS OF FACTORY WORKERS, MINE WORKERS AND PLANTATION WORKERS

Year	Average annual earnings of factory workers	Average weekly earnings of mine workers		Average monthly earnings of male plantation workers in Assam
		Underground coal	Surface coal	
	Rs.	Rs. a. p.	Rs. a. p.	Rs. a. p.
1947	737		—	17–13–11
1948	883			19– 4– 3
1949	986			21–12– 5
1950	959		–	20 6–11
1951	1036	12 8– 4	11 1- 9	22– 7–11
1952	1112	13– 8– 3	11– 4–11	21– 1- 6
1953	1111	13– 5– 9	11–15- 6	35- 2– 4
1954	1111	13– 6–10	12– 2– 6	40–11– 5
1955	1174	13–12– 7	12– 7– 8	46- 2– 0
1956	1208	19– 3 3	17–10 4	47- 8- 0
1957	1248			
1958	1289			
1959	1343			

SOURCE : *Indian Labour Statistics*, 1961, p. 55.

The cash earnings of factory workers increased by about 82 per cent and

those of mine workers by 50 to 60 per cent. The increase in the earnings of plantation workers cannot be calculated in this manner as part of the increase in cash wages was due to the conversion of foodgrain concessions into a cash payment.

When the cash earnings of workers increased, it was natural for the cash contributions of workers also to increase in a reasonable manner. The contribution per member has undoubtedly gone up as may be seen from the following figures, which relate to those submitting returns, though they are not strictly comparable:

Year	Membership*		Income‡	
	No. of unions	Membership	No. of unions	Income
1	2	3	4	5
				(Rupees)
1947–48	1620	16,62,929	1580	36,88,990
1948–49	1848	19,60,107	1813	43,11,819
1949–50	1919	18,21,132	1897	44,38,989
1950-51	2002	17,56,971	1976	44,56,139
1951–52	2556	19,96,311	2509	50,84,401
1952–53	2718	20,99,003	2690	52,05,200
1953–54	3285	21,12,695	3238	59,75,639
1954–55	3545	21,70,450	3535	66,31,373
1955–56	4006	22,74,732	3970	82,93,600
1956–57	4399	23,76,762	4390	80,16,623
1957–58	5520	30,15,052	5470	102,88,150
1958–59	6040	36,47,148	5942	124,91,800
1959–60	6594	39,21,000	6492	153,84,000

*SOURCE: *Indian Labour Statistics*, 1961, p. 111.
‡SOURCE: *Indian Labour Statistics*, 1961, p. 126.
NOTE: Columns 2 and 3 relate both to employers' and workers' trade unions while columns 4 and 5 relate only to workers' unions.

Thus, between 1947-48 and 1959-60, while membership increased by about 136 per cent, the total income increased by about 316 per cent. The *per capita* income rose from Rs. 2.21 to Rs. 3.92. This should normally have made a considerable difference to the ability of individual unions to shoulder expenditure, but the proliferation of unions and the consequent reduction in the average income per union must have weakened the trade union movement in spite of the increase in the total revenues of the movement as a whole.

Sources of Income: The income of trade unions has amounted, in recent years, roughly to Rs. 3.50 per member per year. The income is composed of contributions from members, of donations, of income from the sale of periodicals, of interest on investments and of miscellaneous incomes. Contributions from members constitute the most important source. The percentage

of income from this source was 71.5 in 1953-54 and 1954-55 and 65.2 in 1955-56. From an analysis of the incomes of individual unions it is seen that the better and more prosperous unions recover contributions at rates varying from Rs. 3 to Rs. 5 per year. The unions of the Ahmedabad Textile Association, for instance, receive contributions averaging about Rs. 4 or Rs. 4.5 per member. A few unions show a subscription revenue exceeding Rs. 5 per year, but they are not representative of any substantial group of Indian trade unions. A very large number of trade unions receive as contributions from workers anything from Re. 1 to Rs. 3 per head. Quite a number receive even less. Donations account for less than 20 per cent of the total revenue. The percentages were 18.8 in 1954-55 and 19.8 in 1955-56. The income from other sources is generally petty and may be ignored.

Expenditure of Unions: The expenditure on some of the more important items, given as percentages of the total, is as below:

	Items of expenditure	*State unions*	*Central unions*	*All unions*
1.	Salaries, etc. of officials			
	1954-55	20·6	15·2	20·2
	1955-56	18·5	16·0	18·3
2.	Establishment charges			
	1954-55	24·5	33·7	25·3
	1955-56	22·9	18·6	22·6
3.	Trade disputes			
	1954-55	4·9	4·1	4·8
	1955-56	6·0	2·2	5·8
4.	Compensation to members for loss arising out of trade disputes			
	1954-55	1·3	0·3	1·3
	1955-56	1·1	0·6	1·1
5	Legal expenses			
	1954-55	5·0	1·9	4·7
	1955-56	3·9	5·9	4·0
6.	Funeral, old age, sickness benefits, etc.			
	1954-55	2·5	0·4	2·3
	1955-56	1·9	0·4	1·8
7.	Educational, social and other benefits			
	1954-55	2·1	0·8	2·0
	1955-56	2·0	0·2	1·9
8.	Publications			
	1954-55	0·9	2·8	1·0
	1955-56	0·9	4·6	1·1
9.	Auditors' fees			
	1954-55	1·1	0·6	1·1
	1955-56	0·7	0·6	0·7
10.	Miscellaneous			
	1954-55	37·1	40·2	37·3
	1955-56	42·1	50·9	42·7

Salaries and allowances of officials and establishment charges accounted for

45.5 per cent of the expenditure in 1954-55 and 40.9 per cent in 1955-56. The expenditure on social security and other social services like education was insignificant, accounting for less than 5 per cent of the expenditure. Almost an equal amount was spent on legal expenses. The miscellaneous expenses, which must have included many incidental expenses incurred by office-bearers of unions, also came to the high proportions of 37.3 per cent in 1954-55 and 42.7 per cent in 1955-56.

Income of Unions by Industries: The unions in textiles, transport and communications and plantations, representing 11.1 per cent, 10.7 per cent and 2 per cent of the total number of unions in 1954-55, accounted for 21.1 per cent, 19.2 per cent and 8.2 per cent respectively of the total income. These three groups accounted for 48.5 per cent of the total income. In 1955-56 they accounted for 58.4 per cent of the income. The unions in these three groups are relatively in sounder financial position than unions in other groups.

Income Grossly Insufficient: With an average annual income of, say, Rs. 2,000 per union, it is obvious that nothing like a reasonable organization can be maintained by any except a handful of unions. If half of the average income, i.e., Rs. 1,000 is spent on officials and establishment, the amount will be just sufficient for the payment of a part-time clerk. There can be no question of the employment of any paid senior official-- much less one who can talk on reasonably equal terms with the employer. The result is that the officials of most trade unions are unpaid. Hence the economic necessity for the honorary outsider. It is generally believed that a number of honorary workers make something out of the trade union movement through allowances and unaccounted for expenditure. The report of the Director of the Labour Bureau for 1954-55 and 1955-56 says that "the audit objections generally reveal that the office-bearers do not obtain proper sanction for the expenses incurred. They also do not obtain proper receipts for expenses incurred, and often, fail to open bank accounts." Some unscrupulous leaders make a lot of money through undesirable ways. A common method of extracting substantial sums of money painlessly from workers is to make a hurried levy at the time of receipt of the annual bonus. If special disbursements of large sums of money take place during a period of strife between management and labour, union leaders can effortlessly build up 'Defence Funds' and become their controllers. When a fairly large sum of money comes into the hands of the worker, he is quite pleased with the union which he assumes has been responsible for the windfall, and he is prepared to pay a reasonable amount to the union leader, who, no doubt, takes it on behalf of the union. Since the outsider is often also the accountant, it is no wonder that he alone knows the accounts.

If a medium-sized union must have one whole-time official on say Rs. 250 per month and one clerk on say Rs. 150 per month, the total monthly expenditure, including some amount for postage, travelling expenses, etc., cannot

be less than about Rs. 600. This rate of expenditure requires an annual income of at least Rs. 7,200. A somewhat bigger union which wants to employ a whole-time official of some status will have to spend at least Rs. 500 per month on the official and Rs. 300 on staff. This will mean an annual expenditure of some Rs. 12,000. These estimates do not take into account the several other claims on a union's purse.

Finances of Trade Unions in Other Countries: It might be a useful digression at this stage to consider the high levels at which trade unions in the U.K. and in the U.S.A. recover revenue and incur expenditure. The absolute figures will have no meaning as far as India is concerned, but the trends revealed cannot but be helpful. According to the figures available, in the U.K. 8,287,000 trade unionists paid in 1951 a total sum of £ 16,226,000. Thus, the incidence was £ 2 per head per year or about 9 pence per week. This must have increased considerably in recent years. Many unions in the U.K. have different rates of contribution for different sections of their membership. For adult men the weekly rate ranges from six pence to two shillings and six pence. For women the contributions are somewhat lower and so are the benefits.

The National Union of General and Municipal Workers charges one shilling as entrance fee and 7 pence as the weekly contribution in the case of men and six pence and four pence in the case of women treating the latter as "half members." Women have the option to join at the men's rates and also to earn benefits as applicable to men. The Transport and General Workers' Union had the same rates as the National Union of General and Municipal Workers, but it raised the weekly contributions to 8 pence and 5 pence in 1953. In addition the Union collects in the first week of each quarter a sum of 6 pence from men and 3 pence from women to finance political expenses and to provide benevolent funds for the branches. In the case of the London Society of Compositors composed exclusively of highly-skilled workers, the contributions depend to some extent on earnings. The rate varies from 4*s*. 6*d*. a week for those earning under £ 5 a week to 9*s*. 6*d*. for those earning over £ 9. The entrance fee is at least one pound. The contributions represent 4.5 per cent of wages at the £ 5 a week level and 5 per cent of wages at the £ 9 a week level. Special levies are made generally by unions which provide a substantial range of social security benefits. In addition some unions levy a separate contribution for political purposes.

Between 1946 and 1951 the trade unions in the U.K. had an income of £ 17,000,000 annually against an annual expenditure of £ 13,380,000. The expenditure was on the following items:

Working expenses	57	per cent
Benefits	33	,,
Political expenses	3	,,
Grants	7	,,
	100	,,

Of the benefits, the superannuation benefit given only by a few unions of skilled workers was responsible for 13 per cent out of the 33 per cent of expenditure. The remaining 20 per cent for benefits was distributed as follows:

Sickness and accident benefits	8.0
Funeral benefit	3.5
Unemployment benefit	1.7
Dispute benefit	1.0
Others	5.3
	19.5

In 1951 £ 16,000,000 were spent in respect of 8,287,000 members, i.e., about 38 shillings 2 pence per head. In 1935 this had been 35 shillings and in real terms it meant very much more.

The proportions of the expenditure on working expenses, benefits, etc. varied from union to union. The following comparison for 1951 will be found interesting:

	National Union of General and Municipal Workers (Pounds)	*Associated Engineering Union (Pounds)*
Total income	942,764	2,462,789
Total expenditure	798,000	2,251,291
Expenditure on		
Dispute benefits	1,923	44,685
Unemployment benefits	--	21,585
Friendly benefits	82,245	300,123
Superannuation	--	832,293
Benefits total	84,168	1,199,186
Working expenses	651,859	873,185
Affiliation fees, etc.	66,178	137,654
Other expenses	6,470	41,266
Out of political fund	51,863	48,512

In the case of individual unions it is not unusual to spend anything from 60 to 80 per cent of the total expenditure on the working expenses of the union.

The finances of American unions are on an even larger scale than those of British unions. Even in unions with low dues, union members pay dues at the rate of two dollars per month, i.e., 24 dollars per year. Members of unions of skilled workers pay three, four or even five dollars a month, i.e., 36, 48, or 60 dollars per year. The "low dues" unions do not maintain old age or other pension activities although some carry group life insurance or maintain burial funds. Unions which have dues of three dollars or more per month devote a substantial portion of their funds for old age and disability pensions.

A number of these unions have two classes of memberships, beneficial and non-beneficial. The former may pay three dollars or more per month while the latter may pay only two dollars a month. Initiation fees may range from two dollars to 50 dollars or occasionally even up to 300 dollars or more. Here is a quotation from a standard book:[1] "After a careful analysis, the National Industrial Conference Board estimated that in 1955, 194 unions, including 98 per cent of union members in the United States, had an annual income from dues of $ 475 million with an additional $ 25 million in initiation fees and assessments. The average dues are around $ 3.00 - $ 6.00 per month.... A study made by the Secretary-treasurer of the A.F.L.-C.I.O. in late 1959 confirmed these data as still current."

Unions in such highly affluent circumstances naturally pay their officers adequately and sometimes very generously. Just as general secretaries are the king-pins of British unions, so are presidents of American unions. According to a table reproduced in the *Economics of Labor Relations* by Bloom and Northrup (p. 131) 14 union presidents received emoluments between 30,000 and 60,000 dollars a year and 48 presidents between 15,000 and 30,000 dollars a year. Full-time vice-presidents and secretary-treasurers get about 20 per cent less than presidents.

Thus, the average trade unionist pays Rs. 3 per year in India, £ 2 per year (i.e. Rs. 27) in the U.K. and $ 36 per year (i.e. Rs. 173) in the U.S.A. Thus, the proportion of trade union payment is 1 : 9 : 58. The monthly wages of workers in fairly well-established industries in India were not less than Rs. 75 per month, i.e., Rs. 900 per year for the period for which statistics have been quoted. The average *per capita* annual earnings of factory workers in 1960 were Rs. 1,342. If we take, say, Rs. 1,000 as the annual earnings of a worker who pays Rs. 3 towards trade union dues, his payment comes to 0.3 per cent of wages. In the U.K. we have seen that contributions are of the order of 5 per cent of wages in the case of the highly-skilled compositors. In other cases where the benefits received are less, this percentage may be lower, say 3 or 4 per cent. The payment made by the American worker may be about one to two per cent of his wages. Thus the comparison, if any is permissible, is that the percentages of wages paid as trade union fees in the three countries are 0.3, 3 and 1 to 2.

It is often argued that the Indian worker who is in receipt of a starvation wage cannot afford to pay even the small amount he now pays. The payment that he now makes is so small as to be practically useless. If it is to be effective, it must be stepped up suitably. It is for the trade unions themselves to decide what dues should be levied, but there is no reason why even under Indian conditions union dues should not be levied at, say, one or two per cent of wages and occasionally even more.

But the greater defect of the Indian trade union movement is the very

[1] Bloom & Northrup: *Economics of Labor Relations*, 1961, p. 127.

small size of a large number of unions. If the number of members in a union is large, even a small payment may go a long way towards financing worthwhile projects. As trade unions may find difficulty in stepping up contributions beyond a certain level, the only way of ensuring large resources is to amalgamate the smaller unions and, in any case, hereafter form only large unions. This leads us on to the structure of trade unions in the country.

Structure and Strength: Trade unions in other countries have, at one time or another, suffered from some, if not all, of the weaknesses now afflicting trade unions in India but have gone on from weakness to strength by making suitable changes in their organization and structure. It is necessary, therefore, to examine the methods by which they overcame their weaknesses so that we may consider how far they are applicable to conditions now obtaining in India.

The British Model: In the United Kingdom all the powerful and influential trade unions are very large in size and in resources. As far as numbers go, there is a substantial proportion of small trade unions, but these are of little significance and would presumably not weaken the trade union movement even if they went out of existence altogether. Of the 704 trade unions in 1951, 322 had fewer than 500 members each while 32 had more than 50,000 members each and 17 more than 100,000 members each. More than three-fourths of the total membership of 9,480,000 in 1951 were in the 49 unions with more than 50,000 members each while the remaining one-fourth was divided between 655 unions. In 1952, two big general unions commanded between them, 2,093,000 members while the next four largest had between them 2,113,000 members. Thus the mammoth size of the more important unions is the most striking feature of British trade unions today.

British trade unions were not so large or powerful in the early days. Trade unions often had their origin in friendly clubs of journeymen, meeting largely for social intercourse and eventually for mutual help in sickness or unemployment. Each club, by itself, was ineffective. So a number of them joined together to form a 'trade union' or joint committee to conduct particular movements. The unions were dissolved as soon as the objectives had been gained or lost. Soon it became quite common to have trades' unions, that is, groupings of workers from several trades. A very large number of trade unions were formed in Great Britain in the first half of the 19th century, but they came and went, unable to withstand the onslaughts of employers or of economic depressions.

It was not until big national unions were formed, particularly general or industrial unions, in the second half of the 19th century, that trade unionism could hope to survive as a long-term movement. Of the various unions founded between 1809 and 1835 only seven were found to have survived in 1953 either by themselves or as co-founders of other bigger unions.

The large unions of today have invariably been formed by the amalgamation of a number of individual unions. Though this process started in the second half of the 19th century, amalgamation was not an easy matter as, under legal requirements, a union wishing to amalgamate with another had to get a two-thirds majority of its entire membership, which was quite difficult. In 1917 the Trade Union Amalgamation Act was passed, under which the requirement was reduced to a majority of 20 per cent on a vote of not less than half the total membership. Where even this requirement was found to be difficult, it was usual for the weaker union to dissolve itself and then to join up with the bigger one after transferring its assets and liabilities to that union.

The national union is today the mainstay of the trade union movement in the United Kingdom. Neither the branches and other district or regional organizations on the one hand nor the Trades Union Congress on the other has in any way succeeded in reducing the importance of the national union. Every union has a number of branches, some of which are quite large. The Transport and General Workers' Union has more than 4,000 branches. In the larger towns a union may have several branches, each with its own meeting place. The branches are not concerned with collective bargaining over wages and the general conditions of work of labour. That responsibility is borne by the national or central union. The branch is concerned with the local application and implementation of national agreements. Where there are several branches in the same town, this work is done by a district committee composed of branch representatives and shop stewards. As a branch may contain members from several units, a district committee would prefer to get things done through shop stewards rather than branches. Branches transact a lot of formal or administrative work, such as the reading of correspondence which has passed between the union's head office and various other authorities, including regional officers and shop stewards. They may also collect contributions, though sometimes this is done by shop stewards or special collectors at the work places. Branches may hold lectures and similar activities.

Though branches have lost much of their importance because of the assumption of responsibility by the head office for entering into national agreements, by the District Committee for the implementation of agreements through shop stewards and works committees, and by governmental agencies for social security measures, the branch is still important because every trade union member must belong to a branch and is ultimately responsible, through his elected representative to the annual convention, for shaping the policies of the union. If the branch does not have the backing of a sufficient number of members, it can transmit nothing but weakness to the head office of the national union.

Because of the multiplicity of branches, district or area, committees or councils have to be created for taking charge of local negotiations and implementation of national agreements. In this work shop stewards play a large

part. The system of shop stewards which died out during the years of depression after the First World War has become firmly rooted in the trade union movement after the Second World War. That is largely because new processes and machines develop rapidly and the process of adjustment between the worker and his work requires regular consultation for which stewards are indispensable.

The division of responsibilities between the national union and its district or regional bodies is often the result of historical developments. Where a number of powerful independent unions amalgamate to form a national union, the tendency is for the district or regional bodies to retain much of their original powers and to yield up to the national union only certain residuary powers, such as responsibility for collective bargaining, which must necessarily be centralized. Where, however, a national union has developed in the normal course of organization or by the amalgamation of a number of national unions, it keeps the bulk of the powers, delegating to district or regional bodies only certain specific powers.

The Trades Union Congress, to which most unions are affiliated, was organized primarily for the promotion of industrial legislation and for the securing of legal status for the trade union movement. Otherwise it was not considered to have any jurisdiction, as such, over its affiliated bodies. Its object was not to organize for industrial purposes or to undertake collective bargaining or again to call, or to call off, a strike. It was given some limited rights to deal with inter-union problems. The General Council of the Congress was entrusted with the work of industrial coordination, but it had no power to negotiate or to call a strike. Each union reserved its right to frame its own policy, to conduct its own negotiations and to take decisions regarding strikes. The call for the General Strike of 1926 was issued not by the Trades Union Congress, but by a conference of executives of a number of important unions.

Though the General Council of the Trades Union Congress has since acquired certain general functions, such as the discussion of the relations between capital and labour and of other economic issues, it cannot still be called an agency for formulating any common policy which will bind all affiliated unions. The General Council itself has resisted the entrustment of wider powers to it. The main reason why the Trades Union Congress came to have such limited functions and powers was that powerful unions were already functioning when it was brought into existence and that the immediate objective of the creation of a central body was also very limited.

Thus the main unions—national or general—reign supreme. Though a certain amount of jurisdictional disputes is inevitable because of possible overlapping, there is not much of trade union rivalry, such as is known in India. Trade unions in the United Kingdom have developed their strength through greater unionization, amalgamation, and consolidation. The union concerned with the craft or industry, which knows the problems of that craft

or industry inside out and has a firm hold over the workers engaged in it, functions adequately and effectively and does not yield place to, or seek the assistance of, the central organization of labour in respect of matters pertaining to the union. There is no helpless scouting round for help. Each union relies on its own strength and on nothing else.

Pattern in the U.S.A.: In the United States of America too national unions did not come into existence till the second half of the 19th century. There were a number of unions ever since the turn of that century, but they were largely local and craft organizations. Since the emphasis was on craft organization, the closed shop arrangement was practised by many unions in order to safeguard the interests of craftsmen. The early unions suffered the fate of all small and localized unions. When trade revived and expanded, unions prospered, but when depression set in and employers found it necessary to contract production and to retrench the working force, trade unions crumbled up and were virtually eliminated during several such periods. So long as unions were comparatively small and local, the method adopted for gaining some measure of added strength was by the formation of city federations of the local trade unions. While this effort ensured some coordination and a certain unity of purpose, it could not bring about the strength that a large and unified trade union alone would command.

With the expansion of railroad systems in the second half of the 19th century, the area of competitive production greatly increased. As combined action against several employers became necessary, the formation of national unions became imperative. By 1870 more than 30 national unions were in existence. The National Labour Union established in 1866 to which city trades assemblies and national unions were affiliated was largely reformist in character and was politically-oriented. Its programmes failed and by 1870 the national unions withdrew from it. In the great depression of 1873 to 1879 all but 8 or 9 of the national unions died out. The Knights of Labour, which acted like a big general union and dominated the scene between 1879 and 1887, failed to forge ahead because of its variegated membership and lack of unity and direction. The national unions, which were then largely craft unions, did not gain strength until the formation of the American Federation of Labour in 1886. By the time the A.F.L. was formed, the national unions had been greatly strengthened and reorganized. For instance, the leaders of the Union of Cigar Makers, viz., Adolph Strasser and Samuel Gompers, had reorganized that union on the British model with high dues, a system of social security, and centralized control which aimed at strict discipline. Other unions followed the example of the Cigar Union by ensuring financial stability and centralized control. Direct participation in politics was shunned.

The policies of the A.F.L. helped to maintain the supremacy of the affiliating unions. They included (*i*) strict autonomy for the national unions,

(*ii*) avoidance of political alignments and (*iii*) major emphasis on economic action. The Federation was, however, to lend support to the national unions in strikes and in organizing activities.

The "New Deal" period of 1933-45, during which the important National Labour Relations Act, 1935 (popularly called the Wagner Act) was enacted, witnessed the widespread development of large industrial unions composed principally of semi-skilled and unskilled workers in the mass production industries. The formation first of the Committee for Industrial Organizations in 1935 and later on of the Congress of Industrial Organizations in 1938 greatly encouraged the formation of industrial unions on a national scale.

There are many factors that contribute to union growth such as increased industrialization, expansion in the size of industrial plants, business prosperity or depression, rising or falling prices and living costs, governmental policies and attitudes, union policies, etc., but the development of a proper union structure and the elimination of inter-union rivalry are two very important factors that have a great bearing on trade union growth. If either the structure is faulty and consequently activities are stunted or stultified or rivalry pulls down what has been built up, there can be no great progress.

The structure of trade unions is decided by the effectiveness of the proposed type of organization. Regard must be had to such considerations as the extent of the market for the goods produced, the size and location of employer units, the nature of the technological processes and changes in the industry, and the type of employer organization which will have to be successfully tackled. In some industries in which the goods produced are marketed all over the country, organization must necessarily be on a national scale as otherwise it would be difficult to deal with employer resistance in particular places or pockets. In such a kind of organization, there will have to be a large measure of central and unified control. In other spheres of activity such as, for instance, the building industry, there may not be much competition between one area and another, and organization could be more localized. While a national union would be called for in the former case, a regional or area-wide organization is all that is necessary in the latter case.

Jurisdictional disputes are generally serious only when unions are organized by crafts and not by whole industries. Whether a particular work should be the prerogative of one craft union or of another is always a vexing question. This is greatly diminished, though not completely eliminated, when organization is by whole industries. Even here there is scope for differences as it may be difficult to decide as to what is an industry in a particular case.

American trade unionism has long realized that if its main objective is collective bargaining, strong national unions (which means correspondingly weak federations) are required. National unions do not necessarily confine themselves to one craft or industry. Multi-craft or multi-industrial unions are not uncommon.

The primary organizations of American trade unionism are the national

unions and, under their control, local unions. It is these that negotiate with employers and call strikes. The worker is a member of a local chartered by a national. Each national union is completely autonomous and can decide on its own line of action. There may be federations at the national, state and local levels, but federations are generally loose organizations engaged primarily in political activities and publicity work. At the apex is the A.F.L. or the C.I.O. to which national unions are affiliated. Though the A.F.L. and C.I.O. have now been amalgamated to form the A.F.L.-C.I.O., it might be useful to talk of them separately while discussing historical developments. The individual worker is a member of both the local and the national but is not a member of either of the central organizations, A.F.L. or C.I.O., or of the federations at any level.

The local union (generally referred to as the 'local') corresponds to the branch of British trade unions. The local is part of the national and works under a charter from the latter. The number of locals varies from national to national. Although many nationals have less than a dozen or two of locals, six nationals have over 2,000 locals. Locals also vary in size, some having a few dozen members and some having several thousand members. The Ford local of the United Automobile Workers at River Rouge has 60,000 members. Since there are between 60,000 and 70,000 local unions in U.S.A. and Canada, this would mean an average membership of 200-250 per local. The locals of unions affiliated to the A.F.L. are somewhat smaller than the locals of unions affiliated to the C.I.O. That is because the majority of the former are craft unions while the majority of the latter are industrial unions.

Locals collect fees and dues and act as the initial processors of in-plant grievances. They also decide questions about seniority. Usually agreements have to be ratified by the majority vote of the local before they become effective.

The extent to which locals exercise authority in respect of wage changes, the length of the work day and the work week, the negotiation of new agreements, the calling of strikes and similar matters varies from union to union. In local market industries, such as building construction, building service, barbering, etc., the local unions may be given the power to call strikes and to negotiate agreements without approval from the national. In most craft unions, craft protection regulations relating to matters such as apprenticeship, the use of labour-saving devices, and sub-division of work are usually subject to national control. The American locals have obviously greater powers and responsibilities than the British branches.

There are 200 national unions (also referred to as international unions when they have locals in Canada), of which 100 are affiliated to the A.F.L. and 40 to the C.I.O. The remaining are not attached to any central organization of labour. Some nationals are small, 40 and odd nationals have less than 5,000 members. But six multi-industry giants have memberships exceeding half a million.

The national union enjoys complete autonomy in fixing membership fees and dues, framing policies, negotiating agreements, calling strikes, organizing new locals, etc.

The central organizations, namely the A.F.L. and the C.I.O., to which national unions are affiliated have never attempted to reduce the autonomy of the latter. Samuel Gompers, for long the president of the A.F.L., used to say that no national or international was subordinate to the A.F.L. The A.F.L., according to him, was limited to activities that did not impinge on the autonomy of each trade union.

The chief functions of the A.F.L. include (*i*) defining and preserving the jurisdictional rights of affiliated unions, including the settlement of jurisdictional disputes, (*ii*) assisting national unions in organizing activities and carrying on preliminary organization in new industrial and geographic areas, (*iii*) attempting to obtain the enactment of legislation favourable to labour, (*iv*) seeking to influence public opinion in favour of organized labour and its policies through publications and other means of communication, (*v*) giving research, legal and other assistance to member unions, (*vi*) representing its membership in international organizations and in international affairs, and (*vii*) supporting strikes by affiliated national unions and the purchase of goods bearing the labels of such unions. The A.F.L. has no authority to call members of national unions out on strike or to order national unions to call off strikes.

The structural patterns and basic provisions of the constitution of the C.I.O. are similar to those of the A.F.L. Nevertheless, in actual functioning, there have been some differences. Since the presidents of the C.I.O. have also been presidents of large constituent unions, they have exerted considerable influence over the internal affairs of some of the affiliated unions. On the other hand, Samuel Gompers who was for long the president of the A.F.L. set his face against such interference by the A.F.L. with the affairs of the affiliated unions. The C.I.O. has, through its Political Action Committee, taken a more active interest than the A.F.L. in political matters such as the support of candidates for presidential election.

As regards the control of individual unions, there are wide differences. John L. Lewis, when he was President of the United Mine Workers, ruled his union by methods which were completely autocratic, but he produced such excellent results that the rank and file did not dare or care to challenge him. Similarly James Caesar Petrillo, of the American Federation of Musicians, had the authority to call a strike without consultation or seeking a vote. He could issue executive orders that were binding on all members and all locals. On the other hand, democracy played havoc in the United Automobile Workers. Factions of all sorts have consequently sprung up in that union. However, most unions occupy an intermediate position, not swinging too violently either towards autocracy or towards complete rank and file control.

Structure in India: It is against this background of the successful building

up of the trade union movement in two advanced democratic countries that we must view the problems of the Indian trade union movement. We have in this country nothing comparable to national unions or to the British branches or the American locals. The main instruments of the movement consist of small local unions and of the four central organizations to which they are affiliated. In between these, there are two other types of organizations, namely, federations of unions and the State branches of the central organizations, but these are largely ineffective.

The Indian trade union is generally not a national union in the sense that it covers the employees of most of the establishments belonging to the particular industry in all or most parts of the country. Unions approaching the concept of a national union are very few in number. The fact that the total number of unions in India with a membership of 10,000 or more was only 27 in 1955-56, accounting for 0.82 per cent of the unions and 30 per cent of the total membership is itself an indication of the absence of big national unions. In the United Kingdom, unions with a membership of 10,000 or more accounted for 13.7 per cent of the unions and 92.3 per cent of the total membership in 1955. The List of Trade Unions in India, 1955-56 published by the Director of the Labour Bureau, contains just one union of mine workers, with a membership exceeding 10,000, namely, the Bihar Colliery Mazdoor Sangh, Dhanbad, with a membership of 36,736, out of some 165 unions of mine workers. Though this union contains members belonging to a number of collieries in that area, it can hardly qualify to become a national union. Similarly, the bigger unions in other industries also, such as the Tata Workers' Union, Jamshedpur (29,539), the Tata Mazdoor Sabha, Jamshedpur (13,000), three of the craft unions forming part of the Ahmedabad Textile Labour Association with memberships of 11,677, 25,274, and 21,515, the Transport and Dock Workers' Union, Bombay (20,414) and the Calcutta Port Trust Employees' Association (21,693) are all purely local organizations, often confined to just one big establishment or sometimes, as for instance, in the case of the textile unions, drawing membership from a number of local establishments. Even the big railway unions, viz., the N.E. Railway Mazdoor Union, Gorakhpur (49,887), the Eastern Railwaymen's Congress (39,760), the South Eastern Railwaymen's Union (33,767), the Northern Railwaymen's Union (19,650), the Uttariya Railway Mazdoor Union (24,604), etc. are regional organizations covering substantial numbers of employees of particular railways. There are a number of all-India unions of posts and telegraphs employees, such as the All India R.M.S. Union, the All India Telegraph Traffic Employees' Union (class III), etc., but these have memberships well below 10,000.

The existence of a large number of small and insignificant unions is the most discouraging feature of the Indian trade union movement. Even in an industry like cotton textiles, where the units are generally large employing several hundreds or even thousands of workers and union organization has

gone on perhaps for the longest period, there are individual unions with memberships below 100. A number of them are no doubt unions of handloom and powerloom workers, but in the regular large-scale industry itself there are unions with barely a hundred or two hundred workers. Let us take the case of one medium-sized textile mill in Delhi. There are two comparatively large-sized unions of textile workers in Delhi called the Textile Labour Union with a membership of 2,482 and the Kapra Mazdoor Ekta Union with a membership of 10,027. Then there are the Birla Mill Clerks' Association (96), the Delhi Birla Mill Mistri Union (126), the Birla Mill Mazdoor Union (320), and the Birla Mill Jamadar Union (44). Why there should be four small and independent unions of the workers of one mill besides two general unions of textile workers passes one's comprehension. If workers believe that they can frighten the employer into submission by creating a union, no matter what its size or resources, and printing a large and colourful letter-head, they are greatly mistaken.

The central organizations of labour in India, viz., the I.N.T.U.C., the A.I.T.U.C., the H.M.S., and the U.T.U.C. function not as coordinating bodies dealing with large matters of policy and principle, but almost like a big central union covering the members of all their constituent unions. The autonomy of the individual unions is purely nominal. Neither the Trades Union Congress in the United Kingdom nor the A.F.L.-C.I.O. federation in the United States has any direct control or jurisdiction over the affairs of the unions affiliated to them. They cannot call a strike of the members of the affiliated unions; nor can they direct the calling-off of a strike. Strict autonomy for the national unions is one of the cardinal principles of trade union organization in those countries. As we have already seen, the initial objective of the British Trades Union Congress was to mobilize trade union resistance to legal and political repression and to press for legislation in the interests of labour. True, in recent years the scope of expanded tripartite consultation and increased international activities have placed on the Trades Union Congress a larger and growing responsibility but, nevertheless, this does not extend to organizing for industrial purposes or collective bargaining. The American central organization goes somewhat further in the matter of having an adequate voice in the affairs of the affiliated unions. For instance, the functions of the A.F.L. included the assisting of national unions in carrying on preliminary organization in new industrial and geographic areas, the defining and preserving of the jurisdictional rights of affiliated unions including the settlement of jurisdictional disputes, and the supporting of strikes started by the affiliated unions. Even so, the A.F.L. did not have the authority to enter into collective bargaining on behalf of any affiliated union, to call members of national unions out on strike, or to order national unions to call off strikes.

That is not the case in India. The constitution of the I.N.T.U.C. says that some of the objects are (*i*) to guide and coordinate the activities of the

affiliated organizations, (*ii*) to assist in the formation of trade unions, (*iii*) to secure speedy improvement of conditions of work and life and the status of the workers in industry and society, (*iv*) to secure redressal of grievances by means of negotiation and conciliation and failing these by arbitration and adjudication, (*v*) to take recourse to other legitimate methods, including strikes or any suitable form of satyagraha, and (*vi*) to make necessary arrangements for the efficient conduct and satisfactory and speedy conclusion of authorized strikes or satyagraha. These provisions of the constitution give ample power to the I.N.T.U.C. to take a direct and active interest in the negotiation of demands and disputes and in the authorization and conduct of strikes. In fact, whenever an important dispute arises or a demand is made by its affiliated unions, whether in textiles or in coalfields or in any other field of activity, the I.N.T.U.C., i.e., the central organization, holds itself ready to take immediate notice and to throw itself in as the situation demands.

The provisions in the constitution of the A.I.T.U.C. regarding its powers over the affairs of the affiliated unions are less well-defined, but they are adequate to enable the A.I.T.U.C. to play the same role as the I.N.T.U.C. The A.I.T.U.C.'s endeavour is to further its objects "by all legitimate, peaceful and democratic methods such as legislation, education, propaganda, mass meetings, negotiations, demonstrations and, in the last resort, by strikes and similar other methods, as the A.I.T.U.C. may, from time to time, decide." These potent weapons are not needed by a purely coordinating or advisory agency.

Everywhere unions are referred to as I.N.T.U.C. unions, A.I.T.U.C. unions, etc. They seem to have little importance or standing of their own. The official reports of the central organizations of labour are replete with references such as "I.N.T.U.C. Unions" and "I.N.T.U.C.-led unions", and often mention that "I.N.T.U.C. has a very strong union at —." The impression created by such references is that the various affiliated unions are just units of the I.N.T.U.C. and that the I.N.T.U.C. as the "parent" organization is entitled to interfere freely with the affairs of the affiliated unions.

In practice too, it is the central organizations that count whenever an important dispute or problem arises. If the question is whether or not automatic looms should be installed in a particular unit, it is not the union of that establishment that is consulted but the I.N.T.U.C. or the A.I.T.U.C. An official report of the I.N.T.U.C. says that "in accordance with the policy of the I.N.T.U.C., the Rashtriya Mill Mazdoor Sangh opposed this move and demanded that under no circumstances mills should be permitted to replace plain looms by automatic looms." Again when inter-union rivalries led to serious rioting in the Iron and Steel Works at Tatanagar, the top leaders of both the I.N.T.U.C. and the A.I.T.U.C. had a direct hand in the shaping of the developments. If there is an allegation that there has been a breach of the Code of Discipline on the part of workers in an establishment, the central organizations are brought in almost from the very beginning.

Our central organizations of labour are trying to function like big general unions for the country as a whole even as the Knights of Labour tried to function in the United States in the last quarter of the 19th century. The organizers of the Knights of Labour said that "into it would be gathered all branches of honourable toil," but soon realized that the one union idea was unworkable. A subsequent attempt by American labour to organize the Industrial Workers of the World—also one big union—came to grief after some ephemeral success. There are several reasons why a central organization of labour should not function as a big union entering into collective bargaining and organizing strikes and similar activities on behalf of its affiliated unions. Purely from the practical point of view, it is impossible for a central organization to be constantly negotiating on behalf of individual unions on a variety of matters. The essence of collective bargaining is that there should be constant and continuing contact between the employer and the negotiating union. Thus purely from the point of view of efficiency of negotiation, over-centralization has its serious drawbacks. An even greater defect of such a system is that it saps all local initiative. Negotiations invariably do not succeed in the first round, and if a local union then throws up its hands and appeals to the central organization for help, that is not the way to build up the strength of the various units of the trade union movement. Experience in this country shows that when the central organization is strong, the constituent units tend to be weak. Experience elsewhere shows that where the affiliating unions are strong, the central organization is comparatively weak. This is inevitable and must be faced. Both the central organization and the affiliating units cannot dominate the scene at the same time. If, in the balance, we vote in favour of powerful affiliating unions, we must be prepared to accept a central organization with somewhat limited functions and powers. The central organization need not necessarily be weak: its functions will be different from those of the affiliating units.

It is from this point of view that one wonders whether the creation of the A.I.T.U.C. as early as 1920, when not many primary unions had as yet been formed, was at all a step in the right direction and whether the super-imposition of an apex body has not in fact affected the growth of sound trade unionism in the country. The first trade unions in the country had been set up only after the First World War and by 1920 not more than a year or two of union organization had elapsed. Not all the unions which got themselves affiliated with the All India Trade Union Congress were stable trade unions with fee-paying memberships. A certain number of far-sighted persons were against the formation of an all-India organization at that juncture. Mahatma Gandhi was against the imposition of a central organization of labour as he felt that it would sap local initiative without which no big movement could be built up. The one organization which, under Mahatma Gandhi's influence, steadfastly kept itself away from the orbit of the central organization, namely, the Ahmedabad Textile Labour Association, is today

the best organized trade union in the country, shown up as a model for others to copy. If only a number of others had followed the example of the Ahmedabad Textile Labour Association, what a great difference it might have made to the strength of the movement by now!

It is not our intention to belittle the great part played by the All India Trade Union Congress in the building up of the trade union movement in the country. The speed with which the movement spread in the country must be attributed largely to the efforts made by that organization, but a large nominal membership is not a sign of the effectiveness of organization. If powerful national unions get together and form a federation or central organization for defined purposes, it is the former, and not the latter, that dominate both collective bargaining and general policy-making. Where, however, a central organization comes into existence at a time when there are no powerful national unions and that organization forms trade unions, it is more than likely that the latter turn out to be subordinated to the will of the former.

In India there is another reason why the central organizations have come to dominate the trade union world. The central organizations have succeeded in enlisting the support of powerful political personalities to an extent not clearly possible for individual unions. Since these leaders are powerful, the officers of individual unions have often to seek their support for getting particular demands fulfilled.

The building up of strong unions is an urgent necessity of the Indian trade union movement. One cannot remain content or complacent with mere numbers alone—the number of trade unions and the number of members. A great campaign of amalgamation and consolidation is called for. If national unions can work successfully in a vast country like the United States with its great distances, there is no reason why such unions cannot successfully be worked in India. Where, however, the immediate formation of truly national unions is not feasible, the next best course should be aimed at, namely, the organization of large regional unions joined together to form industrial federations. Federations are at best a poor substitute for strong unions and should be resorted to only when a national union cannot possibly come into existence. When national or regional unions are formed, there will obviously be need for branches or locals for regulating the relationship in individual establishments or in groups of establishments, but collective bargaining in respect of wages and other important conditions of work, as also the responsibility for calling strikes, will be centralized in the main union. A national union with a number of branches has a far greater bargaining and striking power than a large number of small unions attached to individual establishments and loosely tied together into a federation. With strength should come a corresponding measure of responsibility and an equal ability to "deliver the goods." A national campaign for amalgamation of small unions with a view to achieving this purpose is one of the more urgent requirements of the Indian

trade union movement. Such a campaign is feasible if the present top leaders of the trade union movement in charge of the central organizations are prepared to tolerate the emergence of powerful unions and, along with it, of a real challenge to their own power and prestige.

The Outsider Problem: The trade union movement was started by the so-called "outsiders", who have since remained in control of large areas of the movement right up to the present day. The "outsider problem" was raised by the outsiders themselves at the meeting called to inaugurate the All India Trade Union Congress in 1920. The absence of adequate leadership from inside the working classes and the all too obvious tendency on the part of employers to victimize workers functioning as office-bearers were deemed sufficient justification for the continued presence of outsiders on the executives of unions. The problem was re-examined by the Royal Commission on Labour some ten years later. The conclusions were not very different. The gradual elimination of the outsider was said to be the goal to be aimed at, and for that purpose there were various suggestions as to what the proportion of the outsiders on executives should be. All such suggestions ignored an important point made out in the course of the discussion of the Indian Trade Unions Bill, namely, that in practice not more than one or two outsiders sat on the executives of most unions and that so long as the principle of the presence of outsiders on executives was conceded, the exact proportion and actual numbers were of little consequence. Every trade union, big or small, is in the last analysis run by just one or two persons—say the president and the general secretary or the general secretary and the treasurer. The rest of the persons on the executives are just supporters, willing to be guided by the leaders. Thus even if a union has only one outsider, his control may be as effective as if there had been ten such on the executive.

The question, therefore, is not one of the number of outsiders guiding the movement; it is whether there should be any outsiders at all in the movement. Outsiders had undoubtedly an important role to play in the 1920's and in the 1930's when the movement was in its infancy and there were quite serious doubts as to what trade unions could, and could not, do. In other countries too, outsiders had taken an active part in focussing the attention of the public on the grievances and plight of industrial workers and in getting the trade union movement started. In the United Kingdom, for instance, the early supporters of labour were outsiders such as Robert Owen, Francis Place, Kingsley, Frederick Harrison and others. To a certain extent, therefore, history was merely repeating itself in this country. The appalling working conditions obtaining in this country had prevailed both in the U.K. and in the U.S.A. but at a somewhat earlier period of their industrial development. The same remedies and the same arguments employed elsewhere were being advocated in India, again by the same type of outsiders—by persons who, ethically and morally, were far ahead of their times and whose

conscience would not permit them to sail with the prevailing wind of *laissez-faire* and class consciousness.

Where history ceased to have its parallel was when the outsider element showed no inclination to relax its grip over the trade union movement even after 20, 30 or 40 years after the commencement of the trade union movement. The total number of outsiders in 1965 is perhaps far greater than their number in 1920 or 1930. There has been great expansion of the trade union movement and many of the thousands of trade unions that have come into existence in recent years have their full quota of outsiders. There are no statistics available of the number of unions employing outsiders on their executives or of the number of outsiders working in the movement. An interesting analysis made by the authors of a recent book on trade unionism (A. S. Mathur and J. S. Mathur: *Trade Union Movement in India*) shows that of the 25 members on the Working Committee of the Assam Branch of the I.N.T.U.C., 18 (72 per cent) were outsiders who had never been employed in any industry, 4 (16 per cent) were outsiders who had at one time been employed in industry but not at the time of the enquiry and 3 (12 per cent) were workers employed in industry. The outsiders were from the ranks of teachers, lawyers, priests, employees of the Congress office, ex-Government employees, etc. The authors write that "an interesting revelation is that the majority of the members of the Working Committee received emoluments from I.N.T.U.C." and proceed to show how 21 out of the 25 were either part-time or full-time employees of the I.N.T.U.C. "Of the remaining four who are not receiving payment one is a Member of Parliament and three are pleaders who might be benefiting indirectly because of their association with trade unions." The conclusion of the authors is that "the I.N.T.U.C. is thus dominated by outsiders who are employees of the organization."

An analysis so limited in scope cannot throw much light on the extent of outside leadership in the trade union movement. The Assam Branch of the Indian National Trade Union Congress is only just one organization and though that organization is almost completely dominated by outsiders, the problem in relation to all the trade unions in Assam cannot be judged merely by an extended inference. However an analysis made by the authors mentioned above of the length of membership of the Working Committee of the various outsiders is interesting. 9 out of the 25 had been on the Working Committee since 1947. Thus a substantial majority had continued for 7 or 8 years. These persons were found to be political leaders who had sponsored, nurtured and supervised the growth of the organization since its inception. The outsider element had thus dug its toes in.

When objection is taken to "outsiders", it is necessary to know what this term means. In both the U.K. and the U.S.A. officers are elected from among workers in employ, but in the case of all offices involving negotiation with employers the elected persons retire from the works and are employed whole-time by the union. Such officers can afford to be independent and are not

afraid of the wrath of employers. They are paid as whole-time officers by the union concerned. Such persons cannot obviously be called "outsiders" in the sense in which we are using that term. All persons actually working in industry and those who had, in the past, worked for at least a minimum number of years in industry cannot be called outsiders.

Part-time paid officials are suspect. Their allegiance to the union cannot be complete and they only serve to deplete the meagre resources of the union. If the trade union movement can improve its finances and afford to employ competent persons, particularly from within the industry, as whole-time officers, the problem of the outsider can easily be solved. Competent paid officials will devote themselves whole-heartedly to the work of the union and will be far more effective than the politician-outsider who does honorary work. The fact that the finances of trade unions have not been brought up to anything like a reasonable level is a blot on the administration of unions by outsiders. It is in the interests of these outsiders to keep themselves in office as long as possible and at the same time to show up a large nominal membership as indicative of their success in organization. Their continuance in office is certain to be jeopardized by their building up trade union funds sufficient to support whole-time paid officials. A small membership fee serves their purpose admirably. Strict recovery of membership fees will also come in the way of the twin objectives of the outsider. It is no doubt very difficult to persuade members to pay large subscriptions, for that requires great efforts at building up the trade union movement. This difficult task can be avoided by the outsider whose object is merely to swell up membership figures. The extremely poor finances of the Indian trade union are an indication of the failure of the outsider element to put the movement on its feet. Arguments such as that the Indian worker is ill-paid and cannot afford to subscribe adequately have no substance whatever. It is for the leaders to educate workers on the imperative necessity to make adequate payments to the union and to convince them that a little immediate sacrifice will bring them rewards much greater in times to come.

The objections to outsiders in the trade union movement as a permanent feature are several. If the outsider finds paid employment in the movement on attractive terms, the salary may be deemed to be the motive force behind his presence in the movement. In India there is hardly any outsider who comes under this category. Even where payment is made, it is wholly inadequate. If still outsiders, most of them belonging to the middle classes, come to the movement claiming to serve it in an honorary capacity—outsiders who, being teachers, lawyers and the like, cannot ordinarily be expected to have any great urge to share in the miseries of the working classes—there must be some reason for it. There are complaints from time to time that the outsider fills his pockets in various questionable ways—sometimes by misappropriating a portion of the funds, covering himself up by creating confusion in the accounts, sometimes by making an unofficial levy during bulk disbursements

of bonus and arrears of wages, and occasionally even by a straight-forward blackmail of the employer, forcing him to purchase industrial peace by making adequate payments to him. While the extent of such dishonest operations is not known, there is no doubt that they exist to some extent. Honorary workers have been known to become rich over a period of time. It would, however, be rash to classify the majority of trade union leaders under this category. They may not be dishonest at all, and yet, barring a few, they cannot be philanthropists or sheer humanitarians, doing this hard work solely for their mental peace. There must be some other motive behind their exertions. In some cases at least the anxiety to make a name in public life with a view sooner or later to making good in politics is the motive. Even in such cases, while the motive may not be dishonourable, the object is not to serve the trade union movement and to build it up into a strong and self-reliant limb of democracy.

The justification claimed for the retention of outsiders is well known. Workers are generally illiterate and cannot bargain with their employers with any measure of success. Persistent or militant representatives from among the ranks of workers are immediately marked out and dismissed at the first opportunity under one pretext or another. It is difficult for unions to stand up against such tyrannies. An outsider is necessary to make the employer see reason. Some unions prefer firebrands to meet the techniques of particular employers or to put sufficient pressure on them. If the outsider happens to have political influence and access to ministers and other high authorities, so much the better. That is why many unions try to have some well-known political personality as one of their main office-bearers, even if his main function is only to adorn their letter-heads. The person concerned may not be troubled about the day to day working of the union, but his services will certainly be in demand if some serious crisis arises requiring high-level intervention.

These justifications urged in 1920 when the All India Trade Union Congress was formed and again in 1926 when the Indian Trade Unions Act was passed are still urged today when the trade union movement is at least 40 years' old. If the same justifications continue to exist, that is at once the greatest condemnation of the manner in which outsiders have managed to build up the trade union movement all these years. Even today, at the numerous tripartite conferences called by the Government of India and attended by large numbers of workers' representatives, there are hardly a few drawn from the ranks of workers themselves. That shows that the outsiders have shirked their most important duty, namely that of encouraging and training talent from among the ranks of workers. That they have failed in this responsibility has been acknowledged in the recent efforts made by the Government to start workers' education programmes for training trade union leaders.

The employers' attitude towards trade unions has undergone only small and

slow changes. No doubt the trade union movement has been accepted as an inevitable concomitant of modern industrialism, but, whatever be the reason, the hostility towards the movement has not appreciably gone down. This may largely be due to the unsatisfactory manner in which many trade unions, led by politicians, have conducted themselves. The number of employers who look upon the movement as a help rather than a hindrance, as an agency to be cultivated rather than put down, must be few indeed. If the growth of wages and fringe benefits is studied, it will be obvious that employers have not fought shy of giving labour a due share in their own prosperity. What employers cannot understand is the uncertain and unpredictable attitude of union leadership to many labour-management problems.

The elimination of the outsider element at the earliest opportunity is one of the urgent reforms needed to make the trade union movement healthy and strong. It is quite possible that if the outsiders withdrew, the trade union movement might receive a set-back for some time in the beginning. Trade union leaders who are actual workers may even be victimized for a time and workers may be coerced into either joining a company union or not joining any trade union at all. Trade unions may not be in a position to employ paid whole-time officers. But these hardships have got to be suffered at one time or another. If after 40 years of outsider control these dangers persist, what guarantee is there that they will not be present another 40 years hence? If that is inevitable, let the workers go through, and be done with, the suffering so that they may thereafter gain strength and determination. That has been the fate of trade unions all over the world. There has been no trade unionism without tears anywhere at any time. In some cases they may be able to secure relief through adjudication of disputes relating to victimization, but their own added strength should eventually turn out to be their real safeguard. The earlier the ordeal is faced, the quicker it can be got over.

If then elimination of the outsider element is an urgent necessity, what precisely is the method of achieving it? It is here that the problem becomes really complicated. The present law restricts the number of outsiders to 50 per cent of the strength of the executive, but as we have seen, this percentage has no significance whatever. The question is whether outsiders can be totally prohibited by law. It is not very clear whether such a step would bring us in a measure of conflict with our obligations under I.L.O. Conventions 87 and 98, which require that workers' and employers' organizations should be allowed to manage their affairs and to choose their leaders and agencies without any intervention from outside. Since the law already imposes certain restrictions on the number of outsiders on executives, a complete ban would perhaps mean only an extension of those very restrictions. Unless a total ban is imposed, there is little chance that the outsider element will agree to eliminate itself in the foreseeable future. What is necessary and unavoidable in the interests of trade unionism cannot obviously be against the spirit of the Conventions.

The outsiders who dominate all tripartite conferences have already vehemently opposed any legislative provision aimed at the complete elimination of the outsider element. This is but natural, for it is as good as asking them to commit professional suicide. There will also be opposition from the top political leaders. The argument in their case will be that industrial peace is imperative during the progress of our five-year plans and that the elimination of outsiders will lead to added unrest and hence to the unsettling of the plans. This might be a valid argument if we had only one or two more plans to complete, but if we visualize a series of plans extending over a generation or more, the earlier the trade union movement is put on its feet, the better for the plans themselves.

The plan of action suggested is that legislation should be undertaken with a view to banning outsiders on union executives at the end of a defined period of, say, ten years. During this period the workers' education programmes should be greatly stepped up and large numbers of workers got trained in trade union methods. The ban should come into force at the end of the prescribed period, the proportion of outsiders being steadily reduced meanwhile. The consequences of the ban should be such that no person who has not actually worked in an industry or other defined employment for at least five years should be permitted to be appointed to the executive of a union, including a number of designated offices. A union which does not fulfil this requirement should not be registered and will be liable to have its existing registration cancelled. No employer will be required to negotiate with a union which violates the ban or to discuss any matter whatsoever with an outsider. Similarly no outsider will be invited to any tripartite conference convened by Government or to any bipartite consultations called by the employer. If these restrictions are observed for some years, the outsider will withdraw himself not only from the foreground but from the background. It will not pay merely to advise the union from behind the scenes.

Trade Unions and Politics: One of the usual complaints against trade unions in India is that they take more interest in politics than in economics and that their entire approach to trade unionism is coloured and even distorted by their political predilections. These complaints draw support from the undoubted fact that the central organizations of labour are closely identified with the principal political parties of the country and that political considerations come in the way of joint action when on economic considerations there should have been little scope for divided, and sometimes even conflicting, action. Again it was politics that split the first central organization of labour, the All India Trade Union Congress, and paved the way for open conflict between communist and congress elements. While all politics cannot, and should not, be eschewed from the trade union movement, certain limitations must be placed on the role of politics in the trade union field if the latter is not to be swamped by politics and rendered ineffective in the

inevitable struggle for supremacy between industrial and political organizations. We must, therefore, devote some attention to the role of politics in trade unionism.

Position in the United Kingdom: In the United Kingdom political action by trade unions has always been with an eye to the achievement of the primary objects of trade unionism and for no other purpose. When it became evident that the harsh laws operating against the working classes had to be done away with and it became possible for the working classes, after the Reform Act of 1867, to utilize their vote in support of candidates who were pledged to support labour's cause, trade unions found it necessary to extend their activities beyond the economic field. Bodies seeking labour's votes started persuading working class organizations to put up candidates at elections. In 1881 eleven workers were elected to Parliament but practically as members of the Liberal Party. Soon working class candidates started standing for election on their own as independents. In 1892 a number of such persons were elected to Parliament. It was not until 1900 that the Labour Party was formed as a separate political party working in close association with the trade union movement. For many years thereafter labour sought the support of the Liberal Party. It was only after the eclipse of the Liberal Party during the first world war that the Labour Party really got established as a separate party based on socialism. In the early days of the Labour Party's existence, it had no separate organization of its own and relied mostly on trades and labour councils. After 1918 local labour parties were established.

The very fact that the trade union movement did not choose to enter politics directly and considered it proper to set up a separate political organization working in close unison with it shows that the trade union movement was determined not to be deflected from its main objective, namely, the pursuit of the economic objectives of the movement. At the same time it realized that the achievement of many of its economic objectives could be greatly assisted and hastened by appropriate legislative action which was possible only if it was in a position to control, or at any rate to influence, Parliament. The result was that the ordinary trade unionist was not much concerned with the local Labour Party organization. Individually a trade unionist, like anybody else, could become a member of the Labour Party, but organizationally he was connected with that party only if his trade union branch affiliated itself to the local Labour Party organization and sent a delegate, who would from time to time report to his branch members. The majority of trade unionists paid the union's political levy and the union remitted an annual contribution to the Labour Party at the rate of six pence a member (1953 rate). All trade unionists paying the political levy then automatically became affiliated members of the Labour Party, but anyone who wanted to take an active part in the activities of the Labour Party had to join it as a regular member in his individual capacity.

The separation of political and trade union activities is fairly complete even at higher levels. There is a tradition that members of the Trades Union Congress General Council do not sit on the Labour Party Executive, and as all leading officials of big trade unions sit on the former, the latter generally contains only the deputies of the trade union chiefs. That again shows the relative importance which ardent trade unionists attach to trade union and political activities.

With each succeeding election the proportion of trade union representatives elected to Parliament as Labour Party members has tended to fall. In 1918, 49 out of 57 Labour Party Members elected were trade unionists, but in 1951 only 105 out of 295 Labour Members of Parliament were there on the nomination of trade unions. Though many more trade unionists get elected as nominees of the local Labour Party, it is obvious that the Labour Party has steadily become less and less of a party of the official trade union movement in Parliament. The grip of trade unions over the political party is gradually relaxing.

In effect, therefore, it may be said that the trade union movement has created a separate political organization to look after its rights, and that though the Labour Party itself is ultimately controlled by the trade union vote and funds, neither the rank and file members nor the leaders of the trade union movement deem it their duty to take a direct hand in political matters.

Politics in American Trade Unions: American trade unionism was generally against direct participation in politics, especially in the early days of its growth. Early in the 1830's the Working Men's Party, a sort of political party for labour, was formed to press demands such as (*i*) free and universal system of tax-supported schools, (*ii*) 10-hour day, (*iii*) abolition of monopolies, (*iv*) more just taxation, and (*v*) opposition to protective tariffs. But the Party did not achieve any success and soon ceased to exist.

When the A.F.L. was formed, one of its major principles was avoidance of political alignments and concentration on economic action. It did not side with either of the two great political parties and believed in supporting candidates who supported labour's aspirations. No doubt one of the A.F.L.'s functions was to secure the enactment of legislation favoured by the Federation, but this was to be achieved by the persuasion of the legislators.

The C.I.O. was more willing to resort to political action than the A.F.L., but even that organization was not prepared to plunge headlong into politics. The enactment of the Norris-La Guardia Act of 1932 and of the National Labor Relations Act ("Wagner" Act) of 1935, both highly favourable to labour, seemed to postpone labour's urge to political action. It was only in 1947, after labour had lost ground as a result of the passage of the Taft-Hartley Act, that labour realized the importance of vigorous political action. The A.F.L. thereupon established the Labour's League for Political Action.

The League was financed by voluntary contributions. A few years earlier, in 1943, the C.I.O. had established a Political Action Committee and taken an active part in supporting the candidature of presidential candidates like Roosevelt and Truman. Earlier still, in 1936, a Labor's Non Partisan League had been established with the support of both A.F.L. and C.I.O. unions for supporting the re-election of President Roosevelt.

These agencies for political action do not, by any means, constitute anything like an organized labour party. Well-known labour leaders have not been elected to high political office. Political consciousness among the ranks of labour and of its supporters is still vague and weak. It has been reported that many union members and their wives voted in November 1950 for the re-election of Senator Robert Taft, the co-author of the much-hated Taft-Hartley Act. All this shows that while American labour is prepared to take advantage of political action for achieving its objectives, it still lays considerable or even primary emphasis on economic action to achieve its objectives.

Position in India: In India the position is just the reverse of what it is in the U.K. and U.S.A. In the latter countries trade unions resort to politics to such extent as is necessary to make their economic activities, which in fact are their prime objectives, a success. In other words, trade unions use politics for their ends. In India it is substantially true to say that political parties use trade unions for their ends and that the objective is at least as much political as it is economic. The interdependence of trade unionism and politics was the result of two circumstances, namely, the coincidence of the struggles for independence with the growth of the trade union movement and the dependence of the trade union movement on political leaders and other public personalities for its early growth and stabilization. The twenties of this century witnessed the intensification of the political movement for independence as also the beginnings of the trade union movement. Both required struggles and the agitational approach, directed against the Government in one case and against the employer in the other, was the common bond between the two. Often the agency for the staging of physical struggles was the same, namely, the industrial workers. B. P. Wadia, President of the Madras Labour Union, one of the early stalwarts of the trade union movement, made it clear that it was necessary to recognize the labour movement "as an integral part of the national movement."

The early trade union leaders were mostly politicians. They knew only the language and ways of the politician. They had no doubt learned the principles of the trade union movement but had had little or no experience of their practice. That was why strikes on a vast scale took precedence over solid trade union organization in the early stages of the movement.

Politics, as practised, included within its scope many fields of public activity including trade unionism. No wonder, therefore, that the resolutions passed by the Indian National Congress from time to time included specific objectives

in regard to labour. At the Amritsar Session in 1919, the Indian National Congress passed a resolution urging its provincial committees and other affiliated associations "to promote labour unions throughout the country with the view of improving social, economic and political conditions of the labouring classes and securing for them a fair standard of living and a proper place in the body politic of India." At the Nagpur Session in 1920 the Congress expressed its fullest sympathy with the workers of India in their struggle for securing their legitimate rights. At the Karachi Session in 1931 the Congress declared that any constitution for the country should provide for (*i*) a living wage for industrial workers, limited hours of labour, healthy conditions of work, protection against the economic consequences of old age, sickness and unemployment, (*ii*) protection for women and children, (*iii*) freedom for labour from serfdom, and (*iv*) right of labour to form unions to protect their interests with suitable machinery for settlement of disputes by arbitration.

While political parties must safeguard the interests of the working classes by all possible means, it would not be within their responsibilities to directly interfere in the formation and working of trade unions. Equally any direct interference by trade unions in political matters would be unjustifiable. The early infiltration of communist elements into the A.I.T.U.C., which is only another form of saying that the A.I.T.U.C. had come to take part in communistic activities, was a clearly unhealthy development which left its permanent impress of damage on the trade union movement. It led to splits in what was till then a unified trade union movement and eventually to the foundation of rival central organizations of labour. All the trade union rivalry noticed today was the consequence of the inability of the movement to withstand pressures based on purely political considerations.

The constitutions of all the central organizations of labour contain definite political objectives. The very first objective of the I.N.T.U.C. is "to establish an order of society which is free from hindrance in the way of an all-round development of its individual members, which fosters the growth of human personality in all its aspects, and goes to the utmost limit in progressively eliminating social, political or economic exploitation and inequality, the profit-motive in the economic activity and organization of society and the anti-social concentration of power in any form." Another objective is "to place industry under national ownership and control in suitable form in order to realize the aforesaid objective in the quickest time." The A.I.T.U.C.'s objects are (*a*) to establish a socialist state in India and (*b*) to socialize and nationalize the means of production, distribution and exchange as far as possible. The Hind Mazdoor Sabha too desires "to organize to promote the establishment of a democratic socialist society in India." The U.T.U.C. aims at "the establishment of a socialist society in India, the establishment of a workers' and peasants' state in India, the nationalization and socialization of the means of production, distribution and exchange." In the pre-Independence days the A.I.T.U.C. used to pass resolutions demanding the unconditional transfer of

political power to the people, abolition of Indian States and of parasitic landlordism in all forms, nationalization of land, public utilities and mineral resources and control of the economic life of the country by the workers and peasants. If such are the important aims of Indian trade unions, the trade union movement would be expected to pursue them and for that purpose to take a substantial part in political affairs. In other words, the trade union movement would become a combined trade union and political movement. The question naturally arises whether a young trade union movement can afford to devote its meagre resources to the conquest of so vast a field and whether, in the first instance, it should not confine itself strictly to the trade union field in the hope that a strong trade union movement would itself render expansion of the scope of activities easy and natural.

Trade Union Rivalry: The very fact that each of the more important political organizations has virtually "adopted" a central organization of labour and indoctrinated it with its ideologies is sufficient to prevent the central organizations from effectively cooperating with one another. Since because of their political ties they cannot dissolve their separate existence, their main idea is to gain strength at the cost of one another. Where a union has been functioning quite happily, it is not unusual to find the leaders of another organization thrusting themselves into the scene and organizing another union by drawing away the members of the existing union. The disruption of existing unions and the formation of rival unions have been quite frequent pastimes of trade union leaders. Trade unions also change hands from time to time. There is not the slightest justification for this kind of disruption, especially when the field for new organization is so vast in this country. One of the usual forms of nullifying one another's efforts is for one union to start negotiating with the employer when another has broken off negotiations and given notice of strike or has actually started a strike. An employer who does not wish to bend before a strike looks forward to no better ally in such a predicament. He can make some token concessions to the negotiating union and thus effectively break the strike started or contemplated by the other organization. The union which enters into an agreement with the employer thinks that it has scored a point over the other union, the strike threat of which has become ineffective, but it probably does not realize that each time this happens, the strength and bargaining power of the employer greatly increase while those of both the unions greatly decrease. It is a game of playing one union against the other and of making both weak and dependent on the employer.

An incident which serves as a great eye-opener occurred in May-June 1960 in connection with the failure of some employers in the textile industry in the Madras State to implement the Wage Board Award. Though all unions were equally bent on getting the recommendations of the Wage Board implemented, their methods were strangely contradictory. In May 1960 the

unions affiliated to the All India Trade Union Congress and the Hind Mazdoor Sabha went on a one-day token strike to make employers realize that they meant business. The union affiliated to the Indian National Trade Union Congress did not take part in the strike and took pains to show that the strike organized by the other unions was a failure. A few days later the union affiliated to the Indian National Trade Union Congress gave notice of an indefinite strike from 14 June 1960. Promptly the other two unions started negotiating with the employers and gave out that the employers were about to enter into an agreement with them and that there was no need at all for a strike.

There are numerous other instances of strike-breaking by rival trade unions. In fact in India strikes are broken not so much by employers or Government as by trade unions themselves. Indian National Trade Union Congress unions generally try to avoid strikes as it is their policy to get disputes settled by voluntary arbitration. Hence more often it is the All India Trade Union Congress unions that start strikes and then it so happens that it is the Indian National Trade Union Congress unions that are wooed and won over by employers for the purpose of entering into an agreement. Unfortunately, therefore, it is the Indian National Trade Union Congress unions that often appear to act as strike breakers.

The arrival of the Indian National Trade Union Congress in the trade union world as a force to be reckoned with has accentuated the tendency to form rival unions. The Indian National Trade Union Congress itself was a rival organization. It has attempted to form federations and unions in all important fields even when a strong union has been holding the field. The National Federation of Indian Railwaymen was one such organization formed against the All India Railwaymen's Federation which had served railway employees for a long time. Here there was not even the usual excuse that the existing union was a communist or a communist-dominated union. The Indian National Trade Union Congress has formed rival organizations in many other fields, e.g., bank employees, defence civilian employees, transport workers, etc. There are parallel organizations in many industries and individual establishments. While the organization of unorganized labour or even the better organization of weakly-organized sectors would be free from objection, the deliberate breaking into a stronghold with assistance favoured by the circumstances of the moment seems hardly the way to serve the cause of labour. Though the activities of the Indian National Trade Union Congress, as a powerful recent arrival, have been mentioned by way of illustration, the pastime of rival union forming has been indulged in by all central organizations of labour.

Bloated Memberships: The insistence of the Government on taking into account the total memberships of trade unions and of central organizations of labour for purposes of representation on international and national confer-

ences, committees, boards, standing committees, etc. has, in view of the existence of rivalry between labour organizations, led to the reporting of unjustified and bloated memberships of trade unions and of other organizations built on the strengths of trade unions. There are various ways of showing a large and nominal membership. Sometimes members may be enlisted in advance of collection of entrance fee and membership fee. Not all of these are eventually collected. Where defaults are made in the payment of membership fees, steps are not taken to remove the defaulters from the rolls of the union. In such cases the arrears of membership fees are carried over from year to year, and everybody knows that they cannot be collected. Though the bye-laws of most unions contain provisions for the termination of membership as soon as a certain number of months' fees fall in arrears, these provisions are conveniently ignored. Yet another favourite method of acquiring bloated memberships is to collect from each worker a few rupees at the time of payment of the annual bonus and to show that membership fees for a few years have been paid. It need hardly be pointed out that regularity of payment, which must necessarily come out of wages earned, alone instils a sense of participation in the trade union movement in the worker. Lump payments made once in 2 or 3 years do not produce the feeling of cohesion and unity so necessary to make the movement a success. Necessarily such workers are not ready to assert their rights and to support trade union activities in periods of stress and strain. They lack the will and the stamina necessary for undergoing hardships. Unless trade union members feel that a certain union is theirs, that it is for them to back up the union, and that the success or failure of the union is their own, trade union organization cannot be effective or be conducive to the production of results.

Some of the unions purposely keep their accounts in a mess so that nobody can readily disprove any claims made by them. Such a state of affairs also helps to hide inconvenient facts such as the receipt of financial assistance from a prohibited source or the misappropriation of funds by trade union leaders. It is not unusual to hear of extortion of funds by trade union leaders from employers. Such funds are often misappropriated, but the whole or part of them may sometimes be shown as income from membership fees. Where the latter course is followed, there would be no misappropriation, but there would be dishonest accounting in a manner that bloats up the membership and weakens the union.

That registers, accounts and documents are not properly and adequately maintained may be seen from the fact that against large memberships claimed by the central organizations of labour, the Chief Labour Commissioner, who makes elaborate enquiries and allows every opportunity to trade unions to prove their claims, is in a position to certify only a comparatively low percentage of the claims. Thus the memberships claimed and certified in a typical year are given in table on p. 199.

If trade union leaders are so anxious to secure large bloated memberships,

1957-58

Name of central organization	Claimed		Certified	
	No. of unions	Membership	No. of unions	Membership
I.N.T.U.C.	1066	13,80,249	727	9,10,221
A.I.T.U.C.	1409	14,00,141	807	5,37,567
H.M.S.	236	3,57,859	151	1,92,948
U.T.U.C.	285	1,96,978	182	82,001

their attention would be far away from the securing of a firm and stable membership which alone can contribute to the strength of the union. And it is strength, and not flabbiness, that counts for success.

Lack of Preparation for Launching Direct Action: The large majority of strikes and other forms of direct action launched by workers' organizations in recent years have failed, not because the demands in support of which the strikes were called were unreasonable or oppressive but because there was no adequate preparation for starting or sustaining the strikes. Some idea of the extent of failure of direct action may be had from the following figures:

Year	Number of work stoppages	No. of disputes by results				
		Successful	Partially successful	Unsuccessful	Indefinite	In progress
1947	1811	310	298	700	416	61
1948	1259	234	143	528	305	21
1949	920	112	119	359	140	24
1950	814	129	82	638	141	18
1951	1071	150	145	431	144	27
1952	963	199	118	384	161	13
1954	840	117	83	261	231	—

The columns entitled 'unsuccessful' and 'indefinite' indicate the extent of failure, and this is very substantial. Workers succeeded in their objective only in about 20 per cent of the cases. In another 10-20 per cent of the cases they were partially successful. This means that in some 60-70 per cent of the cases, workers were largely unsuccessful. If workers fail in so large a proportion of cases, the weapon of strike must get blunted and will hold no terrors for the employer. Much of the fault for the failure of strikes must be laid at the doors of trade union leaders who must have started the strikes more out of bravado than reason. Personal vendetta and a sense of 'I shall teach you a lesson' are at the bottom of many strikes. That a strike might fail does not seem to frighten the union leader; when piqued by arguments,

he seems to derive a lot of pleasure from merely starting a strike. His prestige soars momentarily, and that is all that many union leaders care for. Many instances of lightning strikes, stay-in-strikes, sit-down strikes, pen-down strikes, etc., are the result of momentary impulses, and though they may serve as pin-pricks to the employer, they are doomed to failure. The frequency with which strikes are started is a measure of the inadequacy of collective bargaining techniques. The union does not arm itself with facts, figures and arguments and often resorts to stubbornness when it cannot effectively meet the employer's points. It must be conceded that between the two, the employer is invariably better prepared. The union allows its emotions to get the better of its strategy and starts flinging threats. Hence premature and unjustified strikes. This is a complete negation of the idea of collective bargaining.

If a strike is to have any chance of success, it must be started only for substantial reasons and must be carefully planned. It must be planned in much the same way as any major campaign. No campaign can ever succeed without ample stocks of ammunition and essential stores. The two essential prerequisites to a strike are (*a*) ample funds for giving strike allowances, and (*b*) firm discipline both among the strikers themselves and in their relationship with their employer. In both these respects Indian unions are woefully deficient. Barring a few unions in the whole country, the vast majority do not have any significant funds at their disposal even for payment of small allowances to strikers for subsistence. It is a pathetic sight to see unions on the verge of a major strike trying to collect funds for strike allowances. It is impossible to collect any appreciable amount at such a time. When strikers themselves are likely to ask for allowances, they cannot be expected to contribute to strike funds. Sympathy from the public cannot sustain a strike, especially when they are going to be faced with an inconvenient situation. Our unions must realize that if they do not build up adequate strike funds during normal times, any strike started is doomed to failure sooner or later.

The second prerequisite, namely discipline, is also wanting. There is so much rivalry at most places that by the time one union calls a strike, another enters into parleys with the employer. Apart from this mutual neutralization of efforts, workers often indulge in violence. Not many employers can really be coerced by workers for any length of time, for even if the employer yields in his anxiety to purchase peace, economic nemesis may soon overtake both him and his workers. Unions have never become powerful so long as they have relied on violence. It is only when they have realized that violence is harmful and that the battle with the employer is one of preparation, strategy and manoeuvre, that they have made collective bargaining a success.

Inadequately Equipped for Collective Bargaining: True collective bargaining

should be a process in which reason and the weight of facts and arguments should win over uninformed clamour on the one side and unjustified opposition on the other. The employer is generally prepared with a mass of useful statistics and information collected by highly competent experts, but the large majority of trade unions are unprepared to meet the employer's facts and arguments. The reason is that even the better type of trade unions have only a clerk or two as their whole-time employees and have no facilities for collecting and analyzing facts and for marshalling arguments. As trade union leaders are generally part-time outsiders connected with a large number of unions, they cannot possibly find the time for a proper study. Barring the Ahmedabad Textile Labour Association and the headquarters organizations of the Indian National Trade Union Congress and the All India Trade Union Congress, very few trade unions have any analytical and research staff worth the name. Modern industry is so complex that only highly competent experts specializing in particular subjects can hope to counter the employer's arguments with reason and confidence. In the absence of such professional competence, collective bargaining degenerates into a mere clamour for concessions, where passion and prejudice get the better of reason and argument. If trade unions must become effective, they must be financially strong enough to employ an increasing number of whole-time experts who will be constantly studying the problems of the industries with which the trade unions are connected so that when the time for collective bargaining arrives, reliable information, statistics and analyses will be available to back up the demands.

CHAPTER VI

TREND AND DEVELOPMENT OF INDUSTRIAL DISPUTES

Early Phase: Labour unrest in the early days of industrialization centred round working conditions rather than the quantum of financial gains. The grant of a weekly holiday, restriction of the hours of work, regularity in the payment of wages, and compensation for industrial accidents were among the more important and urgent demands of labour. As we have seen earlier, the labours of the various factory commissions were devoted to a consideration of such demands. A meeting of 10,000 industrial workers held in Bombay in April 1890 in support of labour's demands, followed by a memorial to the Government, set the pattern for future agitations. As trade union organization was still far away, relief could be had only by enlisting public support and sympathy, and in this labour succeeded to a large extent.

Labour's reaction to unbearable working conditions did not take the form of strikes in the early days. Workers simply abandoned their work in factories and went back to their villages. That was one of the main reasons why industrial labour proved to be so unstable and migratory until comparatively recent times. Recurring famines in the country, coupled with the prospect of comparatively remunerative employment in industries, however, gradually made this labour semi-permanent. By the time a number of factory commissions had made recommendations in support of labour's demand for statutory protection, labour leaders had acquired a measure of confidence in themselves and started thinking in terms of enforcing demands through strikes. Stray cases of strikes took place in the 1890's, but the first really important strike was the one that took place in the Ahmedabad textile mills in February 1895. The decision of the Ahmedabad Millowners' Association to substitute a fortnightly wage system for the weekly wage system which had been in existence since 1869 was the cause of the strike. The strike involved 8,000 weavers, but it soon proved to be unsuccessful. The epidemic of plague in Bombay leading to large casualties and wholesale migrations upcountry, however, affected the Bombay textile mills very severely and for a time labour got the upper hand. Workers who braved the epidemic auctioned their labour to the highest bidder and moved from factory to factory. Their demand that monthly payment be replaced by daily payment had to be accepted for the time being even if it caused much inconvenience to employers. As soon as the plague abated, the Bombay Millowners' Association discontinued daily payments. This led to several strikes and daily payment was partially resumed.

Until the beginning of the First World War, there were a number of

industrial disputes and strikes, but there was no arrangement for conciliation, arbitration or other forms of settlement of disputes. The success or failure of strikes depended on the scarcity or abundance of labour. When labour was scarce, millowners yielded to demands, but at other times they were firm. As the number of mills and other factories was steadily increasing and labour was not correspondingly plentiful, the workers often succeeded in getting what they wanted.

The difficult economic conditions created by the First World War provided greater justification for labour's expectations. It was, therefore, necessary for management to be correspondingly more responsive. The war demands and the consequent shortages of essential commodities led to a sharp rise in prices, and the demand for an increase in wages could not generally be resisted. The result was an all-round increase in wages in 1917 by 10 to 30 per cent. Labour was, however, not uniformly successful. In the disputes in the Buckingham and Carnatic Mills at Madras in 1918, one of the demands of workers was an increase in wages by 25 per cent. In spite of the support given to labour by the Madras Labour Union, the demand was not conceded. The Rev. C. F. Andrews, deputed by Mahatma Gandhi, had to mediate to save the workers from complete loss as a result of the management's decision to lock-out the workers. The management refused to refer any of the disputes to arbitration and dismissed a number of workers.

Arbitration was first successfully practised at Ahmedabad in the dispute in the textile mills at that place in February 1918 over the question of the daily attendance bonus. During the epidemic of plague in 1917 a bonus of nearly 70 per cent of wages had been given to weavers, but when the epidemic subsided, the employers decided to reduce the bonus to 20 per cent. Mahatma Gandhi suggested that the bonus be fixed at 35 per cent. As this suggestion was not acceptable to employers, the dispute was referred to the arbitration of A. Dhruve, Professor of Sankrit, Gujarat College, Ahmedabad. The arbitrator awarded an increase of 35 per cent in the weavers' wages and the dispute was settled. Since then both employers and workers in the textile industry at Ahmedabad have accepted arbitration as the means of settlement of all disputes between them, and that policy has succeeded in a large measure. Ahmedabad may truly claim to be the laboratory that has tried out the largest number of experiments in voluntary arbitration as applied to the solution of industrial disputes.

Extent of Industrial Strife between 1919 and 1939: Reasonably correct statistics of work stoppages are available only after 1921. It was in that year that the Labour Office of the Government of Bombay, accounting for much of the country's statistics, started collecting statistics systematically. The statistics of work stoppages between 1921 and 1938 are given in table on p. 204.

In spite of the fact that the statistics collected were imperfect and incomplete, the figures of man-days lost give a sufficiently correct picture of the

Year	*No. of stoppages*	*No. of workers involved (in thousands)*	*No. of man-days lost (in millions)*
1921	396	600.3	6.98
1922	278	435.4	3.97
1923	213	301.0	5.05
1924	133	312.4	8.73
1925	134	270.4	12.58
1926	128	186.8	1.09
1927	129	131.6	2.02
1928	203	506.8	31.65
1929	141	531.0	12.16
1930	148	196.3	2.26
1931	168	203.0	2.41
1932	118	128.0	1.92
1933	146	164.9	2.17
1934	159	220.8	4.77
1935	145	114.2	0.97
1936	157	169.0	2.36
1937	379	647.8	8.98
1938	399	401.0	9.19

state of industrial strife in the country. The number of man-days lost, which was quite high in the year or two following the termination of the First World War, declined till it rose high again in 1925. Declining thereafter, it shot up to an all-time record of 31.65 millions in 1928 and declining in the period of depression reached the lowest recorded figure of 0.97 million in 1935. It flared up again in 1937 and 1938.

The reason for the comparatively large extent of industrial strife in 1920 and 1921 was the high prices of essential articles. Increased wages were the main issue in most of the industrial disputes of this period. That was the case, for instance, in the general mill strike in Bombay in 1920, in the strikes in the textile industry in Ahmedabad, Broach and Sholapur in the same year, in the large number of strikes in the Madras Presidency and in the serious strike in the Tata Iron and Steel Works, Jamshedpur. In the Tata Iron and Steel Works, workers gained wage increases varying from 30 to 45 per cent of previous wages. In 1921 too there were no less than 396 strikes, of which, however, as many as 211 proved unsuccessful. There were a number of disputes in the Ahmedabad textile mills on the question of bonus. The arbitration machinery consisting of Mahatma Gandhi and Seth Mangaldas failed to arrive at an agreement, whereupon Pandit Madan Mohan Malaviya was appointed as Umpire and he gave an award. There were large strikes in the Buckingham and Carnatic Mills, Madras, in the railway workshops at Lucknow and in the coal-mines in the Jharia coal-field. Though wage increases were granted in some of these cases, prices

rapidly fell and the justification for further wage increases disappeared.

The substantial increase in the number of man-days lost in 1924 was due to the strike in all the cotton mills in Bombay over the question of bonus. Employers had earlier declared that owing to fall in prices and consequent depression in trade, the industry would not be able to pay any bonus. The Bombay Government set up a Committee of Inquiry with Sir Norman Macleod, Chief Justice of the Bombay High Court, as Chairman. The Committee came to the conclusion that the workers had not established any enforceable claim to a bonus and that the profits made by the millowners were not sufficient to admit of the payment of bonus.

Towards the loss of 12.58 million man-days in 1925, as much as 11 millions were contributed by the general strike in the cotton mills in Bombay city and Kurla. It had its origin in the decision arrived at by the Bombay Millowners' Association in July 1925 to reduce wages by 11½ per cent with effect from 1 September 1925. The millowners' case was that there had been an unprecedented trade depression on account of (*a*) high prices of cotton, (*b*) increased cost of production due to high wages and increased prices of coal, stores, etc., (*c*) Japanese competition, (*d*) excise duty of 3½ per cent on cotton manufactures, and (*e*) unprecedented accumulations of cloth. There were discussions on the situation in the Central Legislative Assembly and in the Bombay Legislative Council. There appeared to be general unanimity of opinion on the need for the withdrawal of the excise duty. The employers gave out that if this was done, they would restore the old rates of wages. Eventually the Government of India yielded and suspended the collection of the excise duty. The strike virtually came to an end.

1928 witnessed a record-breaking increase in the industrial strife of the country. Towards the total of 31.65 million man-days lost in that year in the country as a whole, the general strike in the cotton mills in Bombay, which lasted from 16 April to 6 October 1928 and involved 147,644 workers, contributed 22 million man-days. The loss in wages to workers was calculated at approximately 3½ crores (35 millions) of rupees. There were, no doubt, substantial economic reasons for the industrial unrest, but the emergence of rival trade unionism aggravated the situation. The economic justification for the strike was the threatened general introduction of new systems of work and standardization of wages in accordance with the recommendations of the Indian Tariff Board (Cotton Textile Industry Enquiry). According to the Tariff Board, each weaver was to look after three looms instead of two as before and each spinner two sides of the spinning frame instead of one at an increase of 50 per cent in wages. This naturally involved retrenchment of hands. The hours of work for certain operatives were increased and additional emoluments in the form of bonus, etc. were curtailed. These reforms had been started in the middle of 1927 and strikes had already taken place, particularly in the 9 cotton mills of Messrs. E. D. Sassoon and Company, Bombay, at the beginning of 1928. The moderates represented by the

Bombay Textile Labour Union, of which N. M. Joshi was president, were opposed to a general strike, but the Bombay Girni Kamgar Union established in March 1928 with the support and cooperation of Dange, Bradley, Mirajkar and Nimbkar of the Workers' and Peasants' Party, a communist organization, forced a general strike. As the situation became alarming, the Governor of Bombay intervened, but the millowners would not negotiate with unregistered unions. All the unregistered unions, viz., the Bombay Mill Workers' Union, the Girni Kamgar Mahamandal and the Bombay Girni Kamgar Union got themselves registered immediately. The extremist and moderate labour leaders joined hands and formed a Joint Strike Committee which put forward 17 demands including (*i*) that the wage rates that prevailed in 1925 be restored; (*ii*) that the hours of work of any class of workers should not be increased without the consent of the workers concerned; (*iii*) that the new systems of work should not be introduced or continued without the free consent of the workers expressed through their organizations; (*iv*) that standard rules for all mills be framed; and (*v*) that no member of the Association should be allowed to alter the conditions of service to the disadvantage of the workers. Eventually the strike was called off on 6 October 1928 on the setting up of an Enquiry Committee with Sir Charles Fawcett, Judge of the Bombay High Court, as Chairman. The Committee held that the proposals of the Millowners' Association (*a*) for standardization of wages, duties and numbers of operatives in a mill and (*b*) for standing orders for the operatives about the conditions of their employment were on the whole fair and reasonable. Some of the Joint Strike Committee's demands were also considered reasonable. The cut of 7½ per cent in weavers' wages, though held justifiable, was recommended to be abandoned. One of the important demands of the unions considered to be reasonable by the Committee was that millowners should not vary any of the conditions to the disadvantage of the workers without securing their approval through their organizations.

An important outcome of the Committee's work was the framing of a set of Mediation Rules, approved by the Millowners' Association and the Joint Strike Committee, to secure the settlement of trade disputes in their early stages and to preserve harmonious relations between employers and workers. The Rules are important as they were the first of their kind and, if worked in the proper spirit, would have gone a long way towards ensuring peace in the textile industry in Bombay. They contained the following provisions:

1. "In the event of a trade dispute arising between any member of the Millowners' Association, Bombay, and any operative(s), member or members of a trade union registered in accordance with the provisions of the Indian Trade Unions Act, 1926, in any mill or mills in Bombay City and Island, other than a trade dispute as to the correct interpretation of the Standing Orders or the Standardization Scheme of wages laid

down for Bombay Mills which are members of the Bombay Millowners' Association, the following course shall be taken :

"(*i*) Before any notice shall be given by either party to terminate employment for the purpose of a lock-out or strike, the dispute shall be brought forthwith before a joint meeting consisting of not less than two and not more than six authorized representatives of the mill or mills concerned and an equal number of representatives of the Trade Union or Unions of which the operative(s) is a (are) member(s) and such meeting shall be called within four days from the date of a written application by either party for such a meeting; and if a settlement of the dispute is not come to at such meeting or at an adjournment thereof, then

"(*ii*) Before any notice shall be given by either party to terminate employment for the purpose of a lock-out or a strike, the dispute shall be brought before a joint meeting consisting of two or more members of the Employers' Mediation Panel and an equal number of the Textile Trade Union Mediation Panel, and such meeting shall be called within seven days from the date of an application by either party for such a meeting, and if a settlement of the dispute be not come to at that meeting, or at an adjournment thereof, then

"(*iii*) Before any notice shall be given by either party to terminate employment for the purpose of a lock-out or strike, the dispute shall be brought before a joint meeting of the Committee of the Millowners' Association, Bombay, and the representatives of the registered Textile Trade Unions of Bombay, and such meeting shall be called within seven days from the date of an application by either party for such meeting, and if a settlement be not come to at such meeting, or at an adjournment thereof, then either party shall be at liberty to take whatever course it thinks fit.

2. "In the event of a dispute arising as to the correct interpretation of the Standing Orders or the Standardization Scheme of wages laid down for Bombay Mills which are members of the Bombay Millowners' Association, the following course shall be taken :

"(*i*) The dispute shall in the first instance be investigated without delay by the management of the mills concerned who shall, after completing their investigations, in those cases in which a settlement is not arrived at, submit a report within seven days in writing to the Secretary of the Millowners' Association and to the Secretaries of the Textile Trade Unions registered in Bombay.

"(*ii*) Upon receipt of such communication by the Secretary of the Millowners' Association, the dispute shall be brought before a joint meeting consisting of two or more members of the Employers'

Mediation Panel and an equal number of the Textile Trade Union Mediation Panel, to be called within seven days from the date on which the Secretary of the Millowners' Association received the notification referred to in sub-clause (i), and if a settlement of the dispute be not come to at that meeting, or at an adjournment thereof, then

"*(iii)* Upon application of either party to the dispute, the dispute shall be brought before a joint meeting of the Committee of the Bombay Millowners' Association and the representatives of the registered Textile Trade Unions of Bombay to be called within seven days from the receipt of an application by either party for such a meeting, and if a settlement be not come to at such a meeting, or at an adjournment thereof, then either party shall be at liberty to take whatever course it thinks fit.

3. "Whenever a settlement of any trade dispute shall not have been come to and the operatives are on strike, or have been locked out, meetings shall be held periodically between the representatives of the Millowners' Association and representatives of the members of the Trade Unions concerned in the dispute. Such meetings to be held at monthly or shorter intervals. The exact date, time and place of the first of such meetings shall be decided at the last joint meeting previous to the commencement of the strike or lock-out.

4. "Upon an application from either the Millowners' Association or at least one-half of the registered Textile Trade Unions, a joint meeting of the Committee of the Millowners' Association and the representatives of the registered Textile Trade Unions shall be called within 28 days from the date of such an application to discuss any suggestions for altering or amending terms and/or conditions of employment affecting or likely to affect more than one quarter of the Cotton Textile Mills in Bombay."

It is a sad commentary on the way industrial relations were developing in those early days that the Mediation Rules could not be brought into use because there was no responsible trade union to deliver the goods. The more moderate Bombay Textile Labour Union had become unimportant, while the new and militant Bombay Girni Kamgar Union which claimed a membership of 50,000 had had its recognition withdrawn as a result of the labour troubles in 1929.

Another important strike that took place in 1928 was the one at the Tata Iron and Steel Works. Here the problem was one of a large surplus of staff and of the consequent need to reduce the labour force in order to reduce the burden of uneconomic labour. The newly created Labour Organization Department of the Company laid down three principles for reorganization:

(*a*) The creation of a standard force and the relegation of surplus men to a spare gang from which vacancies would be filled until all were absorbed;
(*b*) The change of the basis of pay from a monthly rate to a daily rate with a temporary compensation for loss involved; and
(*c*) Standardization of wages.

These principles were opposed, the first by the Superintendents of other departments and the other two by the workers. The question of wages was agitating the workers considerably. The covenanted staff, they said, were paid excessively and were given large and increasing bonuses. The wages of workers were low and had not been standardized with the result that two workers doing similar jobs were perhaps getting such varying amounts as Rs. 3 a day and Re. 1 a day. The sheet-mill workers went on a strike on the following demands, viz.,

(*i*) a general increase of pay of at least 25 per cent;
(*ii*) a graded scale of pay with annual increments;
(*iii*) bonus at the rate payable to covenanted hands;
(*iv*) ill-treatment by European hands should cease; and
(*v*) formation of a committee of 15 workmen which should be consulted before any man was suspended or discharged.

The men of the boiler furnaces stopped work, and this affected the working of many departments requiring power supply. On 8 May 1928 the General Manager issued an order dismissing all strikers. The dispute was finally settled through the mediation of Subhas Chandra Bose. According to the terms of the settlement, all workers, including discharged and dismissed workers, were to be reinstated except those who had left, resigned or did not rejoin within three weeks of the reopening. The men returning to work were to be divided into two groups, viz., the standard force and the spare gang. Vacancies in the standard force were to be filled from the spare gang and there was to be no fresh recruitment. All persons of the spare gang, not previously absorbed, could be discharged at the end of twelve months. Thus the main object of the management which gave rise to the struggle was largely achieved.

1929 too witnessed considerable industrial strife, the total number of man-days lost being 12.16 millions. An important industrial sector affected was the jute mill industry of Calcutta. There were nearly 100 mills employing about four lakhs of workers within a radius of some 20 miles of Calcutta. After the First World War, the Indian Jute Mills Association had decided to restrict production and to reduce working hours to 54. In 1929 the Association decided to increase the number of working hours to 60 in order to meet the increasing competition from continental mills. The increase in the number

of working hours led to a strike. The Association thereupon agreed to pay the correct proportionate increase in wages for the extra hours worked and also 'khoraki' (an allowance) as before. A settlement was reached through the intervention of the Labour Intelligence Officer of Government. Among the further terms offered by the owners were the maintenance of the scales of bonuses at the levels prevalent before 1 July 1929 and the evolution of suitable arrangements for the prompt settlement of grievances put forward by workers.

The situation in the cotton textile industry of Bombay did not improve after the publication of the Fawcett Committee report. The Girni Kamgar Union complained against :

(*i*) the victimization of the Girni Kamgar Union members;
(*ii*) the obstacles to union activities placed by managements; and
(*iii*) the objection of millowners to the collection of subscriptions inside mills.

The Girni Kamgar Union called out a general strike of textile labour of Bombay city. Though the strike was only partial, the Bombay Textile Labour Union having refused to support it, Government appointed a Court of Enquiry under the Indian Trade Disputes Act, 1929, to ascertain the causes of the dispute and the reasons that prevented a settlement. The Court gave the following as the main causes of the prolongation of the strike :

(*i*) the aggressive and mischievous propaganda of the officials of the Girni Kamgar Union and the inflammatory appeals made by them to the workers, and
(*ii*) the picketing and intimidation by the strikers and acts of violence committed by them on non-strikers.

Among the other important disputes of 1929 were those in the B.B. & C.I. Railway, in the Tinplate Company at Golmuri and in the textile industry at Ahmedabad. The Railway dispute was over the transfer of the workshops at Parel, Bombay, to Dohad, some 300 miles away, and the terms of transfer of the employees to the new station. The dispute was referred to a Board of Conciliation presided over by Bepin Behary Ghose. The strike in the Tinplate Company was for securing for workers the same terms of service as in the nearby Iron and Steel Works at Jamshedpur. A feature of this strike was the efforts made by the management to replace all the strikers by fresh recruits. At one stage there were 2,416 new hands as against 752 old ones. The strike was a failure. The Government refused to intervene. Thereupon a resolution was passed in the Legislative Assembly recommending to the Government of India that the tariff on tinplate be

removed. This was a protest against the apathetic attitude of the Company towards the strikers.

The next spurt of labour troubles was in 1937 when the number of man-days lost suddenly rose from an annual average of about two millions to about nine millions. There were 379 work stoppages in that year involving 648,000 workers. One of the biggest strikes of the year was the one in the jute mills of Bengal. Some 200,000 jute mill workers were involved in the strike. The Working Committee of the Indian National Congress passed a resolution expressing its admiration at the determined and peaceful manner in which the workers were conducting their prolonged strike. It expressed regret that instead of effectively intervening in the dispute for a just settlement, the Government was taking the side of the employers in the dispute and suppressing the struggle by the issue of prohibitory orders under section 144 of the Criminal Procedure Code and by arresting various labour leaders. The Committee recorded "its strongest protest at the reported entry of the police and military into the workers' quarters, the assault on one of the Labour Members of the Bengal Legislative Assembly, the prohibition of these members including the President of the Trade Union Congress from entering their constituencies and the firing on unarmed workers including little boys."

The advent of popular governments in the provinces in 1937 was the signal for a recrudescence of labour troubles. From the point of view of man-days lost 1938 was as bad as 1937. The reason for this was the pent-up grievances of large sections of labour over long periods. Workers had suffered during the years of depression after the First World War from reduced wages, unemployment, and excessive hours of work. Popular ministries were expected to support the cause of labour, for the Congress Election Manifesto had declared that one of the objects of the Congress would be "to secure to them (workers) a decent standard of living, hours of work, and conditions of labour in conformity, as far as the economic conditions in the country permit, with international standards, suitable machinery for the settlement of disputes between employers and workmen, protection against the economic consequences of old age, sickness and unemployment and the right of workers to form unions and to strike for the protection of their interests." Congress governments reiterated these assurances in the first flush of taking over office. Workers naturally assumed that any strikes with a semblance of justification would receive the support of provincial governments and that they would not be put down by the coercive apparatus of the State. Labour did not realize at first that performance might fall short of promise. Hence with its faith in Congress ministries, labour raised all sorts of demands and put pressure on employers. The two general textile strikes at Kanpur (1937-39), the jute workers' strike at Calcutta (1938), and the Digboi Oilfields strike (1939) were some of the major strikes of this period. The Congress governments set up various committees to enquire into labour

conditions and introduced a number of legislative measures in provincial assemblies, but progress in these directions was checked by the declaration of the Second World War and the resignation of Congress ministries.

Work Stoppages after the Commencement of the Second World War: The state of industrial unrest after the commencement of the Second World War may be gathered from the following figures of man-days lost through strikes and lock-outs:

STOPPAGES OF WORK (1939-59)

Year	*Number of stoppages*	*Number of workers involved*	*Total man-days lost*
1939	406	4,09,189	4,992,795
1940	322	4,52,539	7,577,281
1941	359	2,91,054	3,330,503
1942	694	7,72,653	5,779,965
1943	716	5,25,088	2,342,287
1944	658	5,50,015	3,447,306
1945	820	7,47,530	4,054,499
1946	1,629	19,61,948	12,717,762
1947	1,811	18,40,784	16,562,666
1948	1,259	10,59,120	7,837,173
1949	920	6,85,457	6,000,595
1950	814	7,19,833	12,806,704
1951	1,070	6,91,321	3,818,928
1952	963	8,09,242	3,336,961
1953	772	4,66,607	3,382,608
1954	840	4,77,138	3,372,630
1955	1,166	5,27,767	5,697,848
1956	1,203	7,15,130	6,992,040
1957	1,248	6,40,871	4,982,229 *
1957	1,630	8,89,371	6,429,319 †
1958	1,524	9,28,566	7,797,585
1959	1,531	6,93,616	5,633,148
1960	1,583	9,86,268	6,536,517
1961	1,357	5,11,860	4,918,755
1962	1,491	7,05,059	6,120,576

* Before reorganization of States. † After reorganization of States.

The figures prior to the reorganization of States in 1957 did not include the figures for Part B States. Subsequent figures are for the whole of India. The effect of this change in coverage may immediately be seen from the two rows of figures given for 1957. If loss of man-days in excess of five million be deemed to be abnormal, the years in which this took place were 1940, 1942, 1946, 1947, 1948, 1949, 1950, and all years beginning with 1955. Thus out of the 21 years from 1939 to 1959 as many as 12 were abnormal.

In 1940, there was a general strike in the cotton textile mills of Bombay, which was responsible for a loss of over 4.5 million man-days. This was in the first year of the war when the adjudication machinery had not got going properly. The basic issue in dispute was the question of wages. The cotton textile workers of Bombay were the first to demand adequate compensation for the increased cost of living due to the war. The dispute was referred by the Government of Bombay to a Board of Conciliation which directed the Bombay Millowners' Association to pay dearness allowance on a scale linked to the Bombay cost of living index. A similar direction was given by the Bombay Industrial Court in respect of the cotton textile workers of Ahmedabad. Thus started the spate of demands for dearness allowance from workers of every industry and employment in India as a result of the Second World War. The slight increase in work stoppages in 1942 was due almost entirely to stoppages caused as a result of political disturbances. Workers sometimes went on sympathetic strikes; at other times factories could not work owing to the disturbed condition all round.

The very first year after the termination of the Second World War witnessed an unprecedented spate of industrial strife in the country. The numbers of man-days lost in 1946 and in 1947 were 12.7 millions and 16.6 millions. The number of work stoppages increased from 820 in 1945 to 1,629 in 1946 and 1,811 in 1947. The number of workers involved rose from 0.75 million in 1945 to 1.96 millions in 1946 and 1.84 millions in 1947. Thus the work stoppages became more numerous, more widespread and more prolonged. In these years the unrest was general and not localized. In 1946 textile mills accounted for 38.7 per cent of the total disputes, 53.6 per cent of the workers involved and 41.7 per cent of the man-days lost. The engineering industry was also widely affected and accounted for 19.9 per cent of the man-days lost. 42 per cent of the disputes in 1946 related to wages and bonus. In 1947 too textile mills accounted for 37.1 per cent of the total disputes, 52.1 per cent of the workers involved and 44.7 per cent of the man-days lost. Jute mills and railways also contributed substantially to the strife. Wages and bonus again accounted for 42.9 per cent of the disputes.

These developments caused the Congress Working Committee to pass a resolution in the course of which it said:

"The Working Committee view with deep concern the intense and widespread labour unrest which has in recent months involved numerous industries and services in the country in large-scale and prolonged stoppages, entailing heavy material loss and serious hardships to the community as well as the working class. The Committee are aware of the fact that the labour upheaval through which the country has been passing is largely occasioned by the serious privations to which the workers have been subjected in consequence of the tremendous economic maladjustments created by the war, especially the excessive rise in the cost of living that has

remained uncompensated to a very large extent. The Committee are further of opinion that the labour troubles in the country have been aggravated by the total absence of a well-defined national plan or policy in dealing with the claims of this class, by the delay in redressing grievances by means of conciliation, arbitration and adjudication and by the confusion arising out of the uncoordinated action taken in the matter in different parts of the country."

In the course of the long resolution the Working Committee brought out the following points :

(*i*) that the labour unrest was causing heavy material loss to the country;
(*ii*) that the Committee would urge on Governments and employers the need to satisfy the legitimate needs of the working class;
(*iii*) that avoidable strikes should be discouraged;
(*iv*) that public utility services should be immune from strikes and lock-outs;
(*v*) that labour should be freed from interested sections and individuals; and
(*vi*) that all disputes should finally be settled by arbitration and adjudication.

Both the Central and Provincial Governments realized the gravity of the situation and set about devising methods to arrest the deteriorating situation. The Central Government set up a Pay Commission to revise the emoluments of its own employees and eventually implemented most of its recommendations. Certain Provincial Governments too improved to some extent the pay scales of their services, but the emoluments of Provincial Government services generally lagged behind those of the Central services. This led to discontent amongst the former from time to time.

Private employers were somewhat slow to react to the worsening situation. The Employers' Association of Northern India said, for instance, that during the last elections to the provincial legislatures "irresponsible promises were made to labour" and that they were obviously incapable of fulfilment and "are the real cause of the crisis." Government was, however, prepared to do what it could to meet the challenge. Barring war-time legislation, the Industrial Disputes Act, 1947 provided, for the first time, for the application of the principle of compulsory adjudication of industrial disputes throughout the country. Under its provisions lightning strikes in public utility services and the continuance of strikes after a dispute had been referred for adjudication could be prohibited. These provisions automatically reduced the number of strikes. Besides undertaking legislation, the Central Government convened a conference of leading industrialists and

workers' organizations and evolved a three-year industrial truce in December 1947. The resolution passed at the Conference stated, *inter alia*, as follows:

> "....The system of remuneration to capital as well as labour must be so devised that, while in the interests of the consumers and the primary producers, excessive profits should be prevented by suitable methods of taxation and otherwise, both will share the product of their common effort, after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking."

In accepting this resolution the Central Government decided that labour's share of the profits should be on a sliding scale normally varying with production.

In the course of the implementation of this resolution, the Central Government set up two committees, one for evolving principles for settling the workers' share in a scheme of profit-sharing and the other for evolving principles and norms for the grant of fair wages to labour.

The Industrial Truce Resolution created a favourable climate for the improvement of industrial relations. At the same time the effect of the newly-enacted Industrial Disputes Act was at once noticeable. After all, strikes were waged for attaining certain objectives, and if the latter could be achieved by other means, there would be no point in resorting to strikes. Workers soon discovered that tribunals invariably awarded a good part, if not the whole, of their demands. This did not mean that tribunals were partial to labour; wages and other conditions of service were often so inadequate that tribunals found no difficulty in agreeing to a part of the demands without, in any way, compromising their conscience. That, at any rate, was so in the early days of adjudication when tribunals were manned by high-level personnel.

The number of man-days lost in 1948 was no doubt considerably less than the figures for 1946 and 1947 but was still quite high, being about 7.8 millions. This was due to a prolonged strike in the cotton textile mills of Coimbatore over the recommendations of a standardization committee prescribing a higher workload and necessitating some retrenchment. The strike went on for nearly three months and accounted for a loss of 1.9 million man-days.

In 1950 the number of man-days lost rose to 12.8 millions. Of these the loss of 9.4 millions was due to the general strike in the cotton textile industry in Bombay which started on 14 August 1950 and lasted over two months. The strike was over the question of 'payment of three months' wages as bonus for 1949 as against two months' wages awarded by the Bombay Industrial Court. The decision of the Court was eventually taken to the

newly-established Labour Appellate Tribunal which laid down sound principles for calculation of bonus in industry generally and in the textile industry in particular.

The four years 1951-54 recorded a distinct improvement in industrial relations, the total number of man-days lost remaining consistently at the low figure of a little over three millions. It was during this period that the adjudication machinery settled down to systematic functioning under the coordinating influence and guidance of the Labour Appellate Tribunal. Adjudications invariably yielded something worth-while for workers, and there was, therefore, neither necessity nor justification for direct action.

The position has somewhat changed since 1955. The number of man-days lost has risen appreciably. The figures for 1955 and 1956 do not include the figures for Part-B States, but even then they came to 5.7 and 7.0 millions. In 1958, when the number of man-days lost was 7.8 millions, there were a number of prolonged work stoppages. Among these may be mentioned the strikes in the Tata Iron and Steel Company at Jamshedpur, in the Premier Automobiles in Bombay and in the plantations of Kerala. The increase in work stoppages since 1955 is partly, at any rate, due to the steady building up of its forces by the All India Trade Union Congress. Towards the end of the 1940's and in the early 1950's the All India Trade Union Congress received a severe set-back when its office-bearers—all important communists—were imprisoned and its offices subjected to search and seizure. In a few years the All India Trade Union Congress had recovered from the blow and rebuilt itself. Thereafter it started following "constitutional" methods for winning over labour organizations and these necessarily included the strike weapon. It was necessary for the All India Trade Union Congress to show, as frequently as possible, that the Indian National Trade Union Congress was an officially-inspired organization in the pockets of Government and that the All India Trade Union Congress alone had the courage to call strikes against important employers and to squeeze concessions out of them.

Development and Regulation of Industrial Relations: Since Independence the Government has taken a direct and active interest in the promotion of good relations between labour and management largely with a view to ensuring that those relations are conducive to the achievement of the objectives underlying the five-year plans. But even in pre-independence days the State could not afford to be a mere passive spectator, especially if there were signs of the development of undesirable trends in the field of industrial relations. Glaring injustices and hardships caused to labour by unsympathetic managements, which were an affront to the social conscience of the public, had at any rate to be remedied. If the Government in India proved irresponsive, there was always the possibility of pressure being brought to bear on the British Government, particularly by the British trade union movement and the Labour Party. It was, therefore, necessary for the Government of India

to take both legislative and administrative action to remedy rank injustices to labour even if it was not considered proper in those days for Government to pursue an active policy of furthering the aims and aspirations of labour. Thus it was that when intolerable conditions obtaining in factories came to light and public criticism and condemnation reached a pitch when they could no longer be ignored that a series of Factory Commissions were set up in the last quarter of the 19th century, the recommendations of which led eventually to the enactment of the first major legislation, namely, the Factory Act of 1911.

Early Machinery for Settlement of Industrial Disputes: Till the end of the First World War there was no regular machinery for the prevention or settlement of industrial disputes. The usual method of dealing with labour unrest was to face it when it actually arose. When a strike took place, the employer sometimes gave in, but more often he defeated it by standing firm. As the labour force had not yet become a permanent professional force, workers often solved their difficulties by just abandoning their employment and going back to their villages.

After the First World War, however, the employer met with more organized and determined efforts on the part of labour to enforce its claims. This was largely because of the sympathetic interest taken by political and other public leaders in the affairs of the working classes. With support readily forthcoming from influential quarters, workers felt encouraged to face their employers rather than to run away in disappointment and disgust. One of the first results of the agitation started by trade union leaders for better wages and working conditions was the inculcation of a sense of responsibility in Provincial Governments for resolving labour disputes in a reasonable manner. Consequently even though there was no legislative sanction for setting up courts of inquiries or boards of conciliation, Provincial Governments often set up such courts or boards in the hope that their findings would receive acceptance through pressure of public opinion. Invariably such enquiries led to some amelioration of the terms and conditions of service of workers, and employers felt obliged to implement the recommendations. Not many employers would have considered it in their interests to reject findings which had the support not only of the public but of the Provincial Government on which they leaned heavily in times of difficulties.

Reference may be made to a few of these non-statutory enquiries and conciliations which generally produced satisfactory results. In 1919 and in 1920 the Madras Government set up courts of inquiry in respect of disputes in three establishments, viz., the Madras Electric Tramway Limited, the Buckingham and Carnatic Mills Limited, and the oil companies in Madras. In all these cases the "award" of the court was accepted by the parties. In a fourth case relating to the Madras Electric Supply Corporation, which was referred to a court of inquiry in 1920, the award was not accepted by the workers who

went on a second strike. As this agitation did not receive any public sympathy, it collapsed immediately and the workers had to go back to work unconditionally.

In Ahmedabad the method of settlement of disputes was, as suggested by Mahatma Gandhi, voluntary arbitration. Ordinarily the two sides nominated an arbitrator each, but if the arbitrators failed to agree, there was provision for the appointment by them of an umpire. Various persons, both official and non-official, were requested at different times to serve either as arbitrators or as umpires. The final awards were accepted by the parties in practically all cases.

The Bombay Government appointed Judges of the High Court as committees of inquiry in important disputes relating to the mill industry. The Chief Justice of Bombay was appointed in a case relating to bonus in textile mills in 1924 and a Judge of the High Court in the dispute which led to a general strike in the textile mills of Bombay in 1928. In the former case the strike collapsed soon after the publication of the report of the committee while in the latter the strike was called off on the appointment of the committee.

In several cases conciliation too led to satisfactory results. District Magistrates, Sub-divisional Officers, Labour Commissioners and even police officers acted as conciliation officers to bring about the settlement of disputes.

The reason why these voluntary methods of settlement through conciliation, arbitration and enquiry produced satisfactory results in the vast majority of cases is not far to seek. Workers were only just beginning to emerge from an era of intolerable working conditions, and even a small measure of improvement produced a big sigh of relief. They were as yet weakly-organized and did not hope for much. Employers looked to Governments for support in various ways and could not afford to antagonize them. Relief through civil courts was slow and uncertain. Both parties, therefore, readily accepted the recommendations of the voluntary agencies. Implementation by employers was far easier then than now, because of their willing acceptance of the recommendations. These circumstances, while helpful, could not by themselves have fully accounted for the peace that prevailed after the publication of the "award" of any of these agencies. The absence of compulsory adjudication and of the fundamental right to have recourse to High Courts and the Supreme Court for writs or in appeal must have set the stamp of finality on awards issued by voluntary agencies. The parties had not yet become as litigious as they are today.

Though a large measure of success attended such voluntary efforts at settlement of industrial disputes, the frequency and intensity of labour unrest in the years immediately following the First World War compelled the Government of India to consult Local Governments on the desirability of undertaking legislation on the lines of the U.K. Industrial Courts Act of 1919. The three Presidency Governments considered this matter each in its own

way. The Madras Government consulted the Labour Advisory Board, which gave its opinion "that external action under legislative authority should be regarded solely as supplementary to mutual negotiations between the parties concerned and resorted to only when negotiation has failed to secure a settlement." The Board then proceeded to enumerate the steps necessary to promote settlement by mutual negotiation. Measures should be adopted in all big establishments to facilitate the discussion and settlement of differences. Both parties should accept and accord recognition to each other's organization or representatives. If any legislation was considered necessary, it should aim at bringing the parties together for settlement of their differences by discussion. Such discussion could take place in the presence of a conciliator, and if conciliation failed, there was to be provision for reference of the dispute to arbitration. Provision was also to be made for the appointment of courts of inquiry with power to summon and hear witnesses. The Board, however, made it clear that it was not in favour of giving legal force to the awards or recommendations of courts of inquiry and that it would not recommend compulsory arbitration in any form. In the case of public utility services alone the Board recommended that there should be legal prohibition of strikes and lock-outs unless due notice had been given of such a course and one month had elapsed from the date of the notice. The Board suggested legislation for these limited purposes.

In March 1921 the Bengal Government appointed an Inquiry Committee to consider the question of legislation for the settlement of industrial disputes. The Committee expressed itself against legislation, largely because of the absence of effective organization among workers and employers to work the legislation properly. The Committee observed "that many of the strikes which have occurred during the last nine months could have been prevented or could have been settled more speedily if a more cordial spirit of cooperation had prevailed and if some machinery had existed for bringing parties together immediately the difference occurred and before it had time to develop into a serious dispute." For developing the spirit of cooperation, the Committee recommended the setting up of works committees, and for bringing the parties together in the event of a dispute, it suggested the setting up of conciliation boards.

The Bombay Government set up in November 1921 an Industrial Disputes Inquiry Committee "to consider and report on the practicability or otherwise of creating suitable machinery for the prevention and early settlement of industrial disputes." The Committee observed that a large number of strikes had taken place without notice and in the absence of clearly-defined grievances. There were no responsible organizations for formulating the claims of workers and consequently the claims made were often numerous, ill-defined and extravagant. For the prevention of disputes, the Committee recommended standardization of wages, free evolution of the trade union movement, recognition of unions by employers and their registration by the

Government, establishment of works committees, introduction of welfare schemes, and improvement of housing conditions. For the settlement of disputes the Committee felt "that no outside agency, and in particular the agency of the State, should be used until all other means have been employed and failed or unless it is invited by one or other of the parties to the dispute or unless the situation is such that peace, order and good government are prejudiced." Where the latter conditions arose, there should be formed an industrial court of inquiry to be followed, if necessary, by an industrial court of conciliation. In pursuance of the Committee's recommendations, the Bombay Government framed a Bill to provide for inquiry into and settlement of trade disputes in 1922. The Bill was not proceeded with as the Government of India themselves were thinking of an all-India Bill for the same purpose. However the novelty of such a legislation and the necessity to put through a prior legislation relating to trade unions slowed down action on the part of the Government of India. The widespread and alarming strikes of 1928, however, brought the issue to the forefront. The result was the Trade Disputes Act of 1929 which became law on 12 April 1929.

Trade Disputes Act, 1929: This was the first attempt in India to provide by law a machinery for the investigation and settlement of trade disputes. Apart from provisions for the setting up of courts of inquiry and boards of conciliation, the Act contained certain special provisions regarding strikes in public utility services and general strikes affecting the community as a whole.

The provisions of this Act were in part based on the U.K. Industrial Courts Act, 1919 and the U.K. Trade Disputes and Trade Unions Act, 1927. Consequently though the reports of courts of inquiries and the recommendations of boards of conciliation on "what in the opinion of the board ought and ought not to be done by the respective parties concerned" were required to be published by the government setting up the court or board, there was no provision in the Act for making any of the findings or recommendations binding on the parties. It was left to the parties to decide whether they should accept them or not. The force of public opinion was to be the sanction behind them.

Where the employer concerned in a trade dispute was the head of a department under the control of the Governor-General-in-Council or a railway company, the Government of India was named the authority to set up courts of inquiry and boards of conciliation. In all other cases the Local Government was the authority for the purpose. This provision thus introduced at a very early stage the concept of the "appropriate government" with which we are very familiar today.

Where a trade dispute existed or was apprehended, it was left to the discretion of the appropriate government to refer any matters appearing to be connected with, or relevant to, the dispute to a court of inquiry for inquiry or the dispute itself to a board of conciliation for promoting a

settlement thereof. Reference was made obligatory where both the parties desired such a course and the persons applying represented the majority of each party. A court of inquiry was to consist of one or more "independent" persons, that is, persons unconnected with the dispute in question and with any trade or industry directly affected by the dispute. A board of conciliation was to consist either of one independent person or of one independent person as chairman and two or four other members who were either independent persons or persons appointed in equal numbers to represent the parties to the dispute and on the recommendations of the respective parties. Thus even a multi-member board of conciliation could consist entirely of independent persons—an arrangement which no longer holds good. A court of inquiry inquired into the matters referred to it and submitted a report to the authority by which it was appointed, while a board of conciliation investigated the dispute and did "all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute." If a settlement was arrived at by the parties, the board drew up a memorandum of settlement, got it signed by the parties, and sent a copy of it to the authority which constituted it. If no settlement was arrived at, the board submitted a full report regarding the dispute to the authority by which it was set up together with its recommendations for the determination of the dispute. The report of the court or board was required to be published by the authority concerned in an appropriate manner. Courts and boards were given the same powers as civil courts in procedural matters such as the summoning of witnesses, the production of documents, the issuing of commissions for the examination of witnesses, etc. Parties were entitled to be represented before a court or board by legal practitioners. The reports of courts and boards were not binding on the parties and their acceptance and implementation were left to the pressure of public opinion.

Public utility services were defined as any railway service declared to be such by a notification in the gazette, any postal, telegraph or telephone service, any industry, business or undertaking which supplied light or water to the public and any system of public conservancy or sanitation. Persons employed in public utility services were required to give a fourteen days' previous notice within one month before going on a strike. Any person going on strike in contravention of this provision was liable on conviction to imprisonment up to one month and to fine up to Rs. 50 or to both. An employer locking out his workmen without giving a similar notice was liable on conviction to one month's imprisonment or to a fine up to Rs. 1,000 or to both.

The Act also made illegal any strike or lock-out which

(*a*) had any object other than the furtherance of a trade dispute within the trade or industry in which the strikers or employers locking out were engaged; and

(*b*) was designed or calculated to inflict severe, general, and prolonged hardship upon the community and thereby to compel the government to take or abstain from taking any particular course of action.

The penalty for declaring, instigating, inciting others to take part in, or otherwise acting in furtherance of such an illegal strike or lock-out was simple imprisonment up to three months or fine up to Rs. 200 or both. The law thus prohibited sympathetic strikes which turned into general strikes inflicting prolonged hardship on the community. This prohibition was based on section 1(1) of the U.K. Trade Disputes and Trade Unions Act, 1927.

Commenting on the shortcomings of the Trade Disputes Act, the Bombay Government said that that Act should be reinforced by a system which would ensure the setting up in every important industry of conciliation machinery and would provide that until that machinery had been made use of, the powers under the Trade Disputes Act should not be exercised. The conciliation machinery within an industry should be set up by the parties concerned but could be validated, if necessary, by legislation. "This would have the effect", said the Bombay Government, "of narrowing down the issues in any particular dispute and would leave the machinery of the Trade Disputes Act to function only in disputes of serious importance, affecting a whole industry or raising questions of general application to all industries."

The Bombay Textile Labour Union, in its representation to the Royal Commission, said that it was opposed to those sections in the Trade Disputes Act, 1929 which had put additional restrictions on workers working in public utility services. It demanded that those sections should be repealed but that if they were to be retained, special privileges should be conferred on those on whom they were imposed.

The Bombay Millowners' Association represented that the Trade Disputes Act was defective in several respects. For instance, it made no provision for the investigation of disputes between employers' associations and trade unions as section 3 of the Act referred to a dispute between "an employer and any of his workmen." The findings of a court of inquiry or of a board of conciliation were likely to be ignored if unfavourable to labour, owing to the inadequate organization of labour and the lack of a sense of responsibility amongst certain trade union leaders. The Act was also defective in other respects since it did not contain provisions for any restrictions on picketing after the inauguration of a court of inquiry or a board of conciliation.

Views of the Royal Commission on Labour: When the Royal Commission on Labour in India reported, there had been only limited experience of the working of the Trade Disputes Act. Nevertheless the Commission felt that it would be useful to deal with some of the suggestions received on the more important subjects. Dealing with the demand for compulsion, either by making obligatory the reference of disputes to arbitration or by enforcing the awards

of such tribunals as might be appointed to deal with disputes, the Commission felt that the objections to any scheme involving the compulsory reference of "all disputes" to arbitration were "formidable." The Commission said "that the effect on industry would be disastrous if there was a general tendency to look to some external authority to preserve industrial peace and to discourage settlement by the industry itself." It proceeded to say that if every dispute could not be referred, some authority would have to determine when the statutory machinery should be invoked and that there could be no better authority than Government for this purpose. The Commission urged Government to utilize their powers under the Act of 1929 to set up courts and boards more freely.

Regarding the suggestion that compulsion should be applied in respect of the enforcement of awards, the Commission doubted "if those who advocate it are fully conscious of the difficulties involved." One such difficulty was that it would be impossible to coerce large numbers of men into accepting terms on which they were unwilling to work. Moreover if an award was to command sufficient confidence to justify its enforcement, it should rest, like a judicial finding, on the application of criteria which were accepted beforehand by the public. This meant that the principles which were to guide the tribunal's decision must be formulated in legislation.

The case of public utility services, the Commission said, stood in a different category. The principle that workers in public utility services should not discontinue work without notice had found acceptance in many countries even if it did not command universal assent. "In our view the weakest point of the Indian provision is that, while it restricts the powers of workers in public utility services to coerce their employers, it gives in return no assurance that their grievances will receive a hearing." So the Commission recommended that the question of providing means for the impartial examination of disputes should have early consideration. It also suggested certain safeguards against trivial or vexatious applications for action under this arrangement.

The Commission then considered whether permanent courts should be set up in place of the *ad hoc* ones contemplated by the 1929 Act. A permanent court would, in its opinion, have two advantages, viz., that it would eliminate the delay inevitable in constituting courts or tribunals in each case and that a permanent court would acquire intimacy with industrial questions and facility in dealing with them. On the other hand a standing court had certain disadvantages in that the same set of persons might not be equally suitable for dealing with different kinds of disputes and might not command the confidence of the parties in every case. It was also not easy to find non-officials who were prepared to serve on any tribunal when called. The Commission suggested, as a possible alternative to a permanent court, the appointment of a permanent official chairman with whom different members could be associated in different cases.

Emphasizing the need to provide for conciliation at a sufficiently early stage, the Commission said "that the most useful form of State assistance in dealing with trade disputes is scarcely employed in India." The official outlook had been concentrated largely on the final stages of disputes. "It is at the climax of a dispute, when the parties have completely failed to reach a common standpoint, that settlement is most difficult." On the other hand, it was in the earlier stages that assistance of the right kind might be most valuable. The Commission said that it was far better to get the parties to a dispute to settle it themselves than to put forward a settlement for them and attempt, by invoking public opinion or otherwise, to give it force. "India has tried to copy the less valuable part of the machinery employed in Great Britain whilst ignoring the most valuable part." The Commission recommended adequate emphasis on conciliation in the early stages. For keeping in touch with developments in the field of industrial relations and for proffering assistance to parties and advice to the Government, the Commission suggested the appointment of one or more expert officers under every Government.

Though the Trade Disputes Act was enacted only for a period of five years, this limitation on its existence was removed by an amending Act passed in 1934.

It was soon found that the Trade Disputes Act, 1929 was not of much assistance in the prevention or settlement of industrial disputes. As against the considerable number of arbitrations, enquiries, and conciliations successfully attempted on a voluntary basis in the decade preceding the enactment of the Trade Disputes Act, hardly two boards of conciliation and two courts of inquiry were set up during the period 1929-33 when there were more than 500 disputes in India. The inadequacy of this enactment, the absence of machinery for dealing with disputes in their early stages, and the recommendation of the Royal Commission on Labour that arrangements should be made to provide a machinery for conciliation made the Government of Bombay move in the matter in 1934. Thus came into existence the Bombay Trade Disputes Conciliation Act, 1934.

The Bombay Trade Disputes Conciliation Act, 1934: The object of this Act was to provide for conciliation through a single official conciliator who would be available for intervention at any stage of a trade dispute which would not have been possible if an elaborate conciliation board had to be set up in terms of the Trade Disputes Act, 1929. As this was a new experiment and the requisite machinery was not immediately available everywhere, its operation was confined, in the first instance, to the textile industry in the City of Bombay and in the Bombay Suburban District. There was, however, provision in the Act for its extension to other industries and other areas. The Commissioner of Labour was made *ex officio* Chief Conciliator throughout the Presidency except in any area for which a Special Conciliator was

appointed under the Act. Assistant Conciliators could be appointed to assist the Chief Conciliator or a Special Conciliator or to perform such duties as might be delegated to them. The term "Conciliator" included all the three categories of conciliators.

An important official provided for in the scheme was the Labour Officer to be appointed by the Government for such area as might be specified. The duty of the Labour Officer was "to watch the interests of workmen with a view to promote harmonious relations between employers and workmen and to take steps to represent the grievances of workmen to employers for the purpose of obtaining their redress." The Labour Officer was empowered to enter any place used for trade or industry and to call for documents relevant to the grievances of workmen.

If a trade dispute existed or was apprehended, either party or the Labour Officer could report the matter to the conciliator concerned for a settlement of the dispute. A conciliator could also take cognizance of a dispute on his own knowledge or information. The conciliator would then issue notice to the parties to appoint within a prescribed time their delegates to represent them in the conciliation proceedings. If an employer failed or refused to appoint a delegate within the time specified in the notice, he was liable, on conviction, to a fine extending upto Rs. 100 with a further fine extending upto Rs. 100 for every day on which the failure or refusal continued. Where workmen, who were parties to the dispute, failed or refused to appoint a delegate, the Labour Officer could act as the delegate on their behalf.

On the completion of conciliation, with or without success, the conciliator submitted a report together with a memorandum of settlement, if any, to the Government. In the event of failure, the report mentioned the reasons why a settlement could not be made.

If any person instigated or incited others not to take part in conciliation proceedings or otherwise obstructed a conciliator in the discharge of his duties, he was liable, on conviction, to imprisonment up to six months or fine or both.

The setting up of statutory machinery for conciliation was attended by satisfactory results. In the first four months—September 1934 to December 1934—as many as 161 cases were dealt with by the Labour Officer. These represented about 50 per cent of the total number of cases which arose during that period. The very first months thus established the immense possibilities of a quickly-available conciliation machinery.

It is interesting to note how one set of provisions in this law ran counter to the spirit of conciliation. An employer who failed or refused to appoint a delegate was liable to be prosecuted. Compulsion in the process of conciliation cannot obviously yield results. Similarly it is not understood how a Labour Officer acting as the delegate of workmen who had failed or refused to nominate a delegate could bring about an agreement between the parties. These were, however, optimistic experiments in the very early days of

conciliation under a statute. The novelty of the experiment and a show of authority must have proved sufficiently powerful to produce results in days when neither party was too sure of its position in relation to the entry of law into labour.

The Trade Disputes (Amendment) Act, 1938: Following the example of the Bombay Government and in order to give effect to an important recommendation of the Royal Commission on Labour, the Central Government introduced a Bill on 31 August 1936 to amend the Trade Disputes Act, 1929. This Bill, which was passed in 1938, authorized the Central and Provincial Governments to appoint conciliation officers for mediating in or promoting the settlement of trade disputes.

The Bombay Industrial Disputes Act, 1938: Experiments in the adjustment of industrial relations through statutory regulation steadily progressed over a number of years commencing with the Trade Disputes Act, 1929. The City of Bombay had concentrated within its boundaries a large number of industries and, therefore, came up against labour problems far more frequently and acutely than any other local area in the country. The special problems of Bombay could not be tackled by a simple enactment meant for general application throughout the country. Hence the experiments carried out in Bombay were of a specialized character. But as they involved elaborate processes, they were obviously not suitable for general application in the rest of the country or even in the rest of the Bombay Province itself.

The Trade Disputes Act, 1929 provided for the appointment of courts of inquiry and boards of conciliation for the settlement of industrial disputes by voluntary action. The machinery was, however, so cumbrous, being unfamiliar, that it was used very sparingly—in fact far less frequently than its non-statutory counterpart employed in earlier years. A quickly available machinery for conciliation of industrial disputes in their early stages was needed, and this had been established for the first time by the Bombay Trade Disputes Conciliation Act, 1934. However, that Act marked only one step forward. There was still no obligation on the parties to seek conciliation before resorting to a strike or lock-out. There was also no provision for postponing strikes and lock-outs pending conciliation or for declaring certain types of strikes and lock-outs illegal.

It was with a view to remedying some of these defects that the Bombay Industrial Disputes Act, 1938 was enacted. It provided for what might broadly be called compulsory conciliation and voluntary arbitration. The Act was amended in May 1941, during the stress of war, with a view to introducing compulsory arbitration of certain types of disputes. The Act also made elaborate provisions for the registration of various types of unions, the certification of standing orders, the issue of notices of change and the

declaration of strikes and lock-outs as illegal in certain circumstances.

The provisions relating to the registration of unions were very elaborate. The registration contemplated under the Act was not registration under the Indian Trade Unions Act, 1926 but registration of unions which had already been registered under the Indian Trade Unions Act, 1926 and which fulfilled certain prescribed conditions regarding membership and recognition. The Act took no notice of a union which was not registered under the Indian Trade Unions Act. A recognized union which had, for a period of six months next preceding the date of application, a membership of not less than 5 per cent of the total number of employees employed in any industry or occupation or any other union, whether recognized or not, which had a membership of 25 per cent of the total number of employees in the industry or occupation could apply for registration under the Act (section 7). If more than one union applied for registration in respect of an industry or occupation, the one with the largest membership of employees employed in the industry or occupation alone could be registered (proviso (b) to section 8). When a union had already been registered, another with a larger membership than the registered one during the whole of the six months immediately preceding the date of the application could apply to have the registration of the former cancelled and to get itself substituted in its place (proviso (d) to section 8).

A registered union in a local area, which had during the whole period of six months prior to its application a membership of not less than 25 per cent of the total number of employees employed in an industry or occupation, could apply to the Registrar for being declared a representative union (sub-section (1) of section 12).

If in any local area, there was no registered union in an industry or occupation, a union which had, for a period of six months prior to the application, a membership of not less than 5 per cent of the total number of employees in the industry or occupation could apply for being declared as a qualified union (sub-section (2) of section 11).

A representative union could act as the representative of all employees even where only some of the employees directly affected by a change were its members. A recognized union, registered otherwise than as a representative union, could act and conduct all negotiations and enter into agreements on behalf of the employees only if the majority of the employees directly affected by a change were its members (clause (29) of section 3). A qualified union could not act as a representative of employees but was entitled to assist the representatives of employees and appear in all proceedings under the Act where it had more than 50 per cent of the employees concerned as its members (sub-section (2) of section 75). In the absence of a representative or registered union, employees could elect not more than five from among them as their representatives in each case (clause (29) of section 3).

Every employer to whom the provisions regarding standing orders applied was required to submit standing orders with regard to all industrial matters

mentioned in Schedule I for the approval of the Commissioner of Labour (sub-section (1) of section 26). The Commissioner of Labour was empowered to "settle" the standing orders subject to appeal to the Industrial Court. An employer intending to make a change in any standing orders or in respect of an industrial matter mentioned in Schedule II was required to give notice of such intention in the prescribed form to the representative of the employees (section 28). Similarly, an employee desiring a change in the standing orders or in respect of any other industrial matter was required to give notice to the employer. If during 15 days from the date of service of the notice an agreement was arrived at in regard to the proposed change between the employer or employers and the representative of the employees, a memorandum of such agreement signed by the parties was forwarded by them to the Commissioner of Labour, the Registrar and the Labour Officer (section 30). The Registrar entered the memorandum of agreement in the register kept for the purpose and the agreement so recorded became a registered agreement. If any change in respect of which a notice was given was objected to by the opposite party, the party which gave such notice had to send to the Registrar, the Chief Conciliator and the conciliator of the local area a full statement of the case within 21 days from the date of service of the notice (section 34). On receipt of the statement, the conciliator entered the industrial dispute in the prescribed register and thereupon conciliation proceedings were deemed to have commenced (section 35). Where no settlement was arrived at, the conciliator was required to submit a report to the Provincial Government stating the reasons on account of which a settlement could not be arrived at. The Provincial Government published the report unless they decided to refer the dispute to a Board of Conciliation. Where a settlement was arrived at, it was duly recorded in the register of agreements and published in the manner prescribed (section 38).

During the pendency of any proceedings before the conciliator, it was open to the Provincial Government to refer the dispute to a Board of Conciliation. Such reference was obligatory if both the parties agreed to the reference (sub-section (1) of section 39). A Board of Conciliation consisted of a Chairman and an equal number of members selected by the Provincial Government from panels representing the interests of the employers and of the employees. The Chairman and all members of the Board were to be independent persons, that is, persons unconnected with the dispute under conciliation or with the industry directly affected by the dispute (sub-section (2) of section 23). All conciliation proceedings were to be completed in less than two months from the date on which the dispute was entered by the conciliator in the appropriate register.

The Act provided that an employer and a registered union could, by a written agreement, agree to submit any present or future industrial dispute or any classes of such disputes to the arbitration of any person whether such arbitrator was named in the agreement or not. Such an agreement was

called a submission (sub-section (1) of section 43). If no provision was made in a submission for the appointment of an arbitrator or where, for other reasons, the appointment of an arbitrator or an umpire was not possible, the dispute had to be referred for the arbitration of the Industrial Court (section 49). Similarly, an arbitrator other than the Industrial Court could refer any matter in which a decision on any question of law was required to the Industrial Court for its decision. The arbitrator or the Industrial Court was required to make an award, to give notice of the award to the parties, and to forward a copy of it to the Registrar and the Labour Officer. The Registrar was required to enter the award in the register and to publish it in the official gazette.

A Court of Industrial Arbitration was required to be set up by the Provincial Government for determining industrial disputes and dealing with other matters under the provisions of the Act (section 24). The Court consisted of two or more members, one of whom was appointed as its president. Only a person who was or had been a Judge of a High Court or was eligible for being appointed a Judge of a High Court could be appointed as a member of the Industrial Court. One of the important duties of the Industrial Court was to arbitrate in disputes referred to it (sections 49 and 49A). Another set of important duties was to hear appeals from the orders passed by the Registrar or the Commissioner of Labour under various provisions of the Act and of the standing orders (section 53).

Strikes and lock-outs were declared to be illegal under certain circumstances (sections 62 and 63). For instance, strikes and lock-outs were illegal if they related to an industrial matter mentioned in Schedule I and the standing orders relating to such matter, having been submitted to the Commissioner of Labour, had not been settled by him or by the Industrial Court. A strike or lock-out was also illegal if it was started without giving notice in accordance with the provisions of the Act. Where conciliation or arbitration was in progress, any strike or lock-out commenced before the completion of the proceedings was illegal. A strike or lock-out called in contravention of the terms of a registered agreement, settlement or award was also illegal. Broadly speaking, where the Act had provided for the taking of certain action in connection with the raising of an industrial dispute, or where processes relating to conciliation or arbitration were in progress, or where agreements, settlements or awards had been arrived at, no strike or lock-out would be legal.

The object of the Act was, therefore, to give encouragement to the formation of responsible trade unions and to provide for conciliation and arbitration in a systematic manner. Other matters for which provision was made in the Act, such as the certification of standing orders, the giving of notices of change, the making of strikes and lock-outs illegal, etc. were all incidental to the main object of the Act. This Act was applied only to the cotton, silk and woollen textile industries either in the whole or in parts of the Province

of Bombay. In this limited sphere, it was a success, but the provisions were so elaborate that they were not fit for wholesale application to industries all over the country.

State Policy during the War: When the Second World War started, it became imperative that industrial strife should not come in the way of the production needed for the prosecution of the War. Owing to rise in prices, the real wages of workers had steadily fallen since the commencement of the war, and grave industrial unrest was anticipated unless reasonable satisfaction could be ensured to workers. That was the reason why Government felt it necessary to introduce the principle of compulsory arbitration in the adjustment of industrial relations in the country. Early in 1942, an amendment was made to the Defence of India Rules. A new Rule 81A conferred on the Central Government wide powers, which were delegated to Provincial Governments, to issue general or special orders for reference of industrial disputes to conciliation or adjudication if such a course was considered necessary or expedient for securing the defence of British India, public safety, maintenance of public order or efficient prosecution of war or for maintaining supplies and services essential to the life of the community. The Rule also empowered the Government to provide for the prohibition of strikes and lock-outs in connection with such disputes and for requiring employers and workers to observe prescribed conditions and terms of employment for a fixed period. Power was also given to the Government to enforce the awards of adjudicators. By virtue of these powers, the Government of India published an order on 21 August 1942 setting out the detailed provisions in connection with the settlement of industrial disputes. The order stated that no person employed in any undertaking could go on strike in connection with any trade dispute without having given to his employer, within one month before striking, not less than 14 days' previous notice in writing of his intention to do so. Similarly, no employer could lock-out his employees without giving 14 days' previous notice. When a trade dispute had been referred to a court of inquiry or a board of conciliation under the Trade Disputes Act, 1929 or for conciliation or adjudication under an order made under Rule 81A of the Defence of India Rules, no person employed in any undertaking concerned in the dispute could go or remain on strike and no employer in any undertaking concerned in the dispute could lock-out or continue to lock-out his employees during the pendency of proceedings and for two months thereafter. Under Rule 81A, the Government could refer any trade dispute for conciliation or adjudication and could enforce, for such period as might be specified in an order, all or any of the decisions of the adjudicating authority. There were also provisions for indicating the matters upon which adjudication was necessary and the parties that were to be brought before adjudication. The punishment for violation of any order made by Government under

Rule 81A of the Defence of India Rules was substantial, being subject to a maximum of three years' rigorous imprisonment or fine or both.

In effect, Rule 81A of the Defence of India Rules could, if such was the intention, eliminate all legal strikes and lock-outs. During the obligatory 14 days' notice which a party had to serve on the other, Government could take a decision to refer the dispute either to conciliation or to adjudication. No strike or lock-out was permitted during the pendency of the proceedings and for two months thereafter. If adjudication was ordered, the award of the adjudicator could be made binding for a prescribed period, and during that period any strike or lock-out over the same issues would be illegal.

About the middle of 1941, a similar provision for compulsory arbitration was made in the Bombay Industrial Disputes Act, 1938, under the new section 49A. The Provincial Government was empowered to refer any industrial dispute to the arbitration of the Industrial Court if it was satisfied that a serious outbreak of disorder or a breach of the public peace was likely to occur or that serious or prolonged hardship to a large section of the community was likely to be caused or that the industry concerned was likely to be seriously affected and the prospects and scope for employment curtailed as a result of the industrial dispute.

Thus were laid the foundations of compulsory adjudication of industrial disputes in India. The success that attended adjudication during the war years encouraged the Government to continue the emergency provisions even after the termination of the war. The Emergency Provisions (Continuance) Ordinance 1946, modified Rule 81A of Defence of India Rules only slightly and retained the substance of that Rule. The only important change made was the introduction of the concept of the "appropriate Government," whereby industrial relations in any industry, business or undertaking carried on by the Central Government or by a railway company or concerning a mine, oilfield or a major port were kept with the Central Government and the rest handed over to Provincial Governments. All the other provisions relating to conciliation, adjudication and enforcement of awards were retained without any major change.

The Bombay Industrial Relations Act, 1946[1]: The large-scale industrial strife which commenced on the termination of the Second World War affected Bombay most, and necessity again forced the Government of Bombay to consider how best to meet the challenge. The Bombay Industrial Disputes Act, 1938 had been in force for over eight years, and though its application had been restricted to the textile industry, the experience it yielded had been invaluable. The Bombay Government decided on the

[1] Though this Act is called the Bombay Industrial Relations Act, 1946, it is marked Bombay Act No. XI of 1947 as it came into force on 15 April 1947.

strength of that experience that it had "become necessary and possible to build further on the same foundations."

Statement of Objects and Reasons: The Statement of Objects and Reasons presented to the Legislative Assembly gave succinctly the salient features of the Bill:

"(1) Government seeks to achieve its declared object of facilitating the organization of labour by creating a list of approved unions, introducing a category of primary unions, removing for the purpose of registration the condition relating to recognition by the employer, bringing down the minimum membership for a representative union from 25 to 15 per cent and reducing the qualifying period from six to three months. An approved union is invested with substantial privileges but is also required to undertake a corresponding set of obligations in the interests of the stability of industry and the progress of sound trade unionism. Even a small beginning in this direction in the shape of a primary union having as members 15 per cent of the employees in a single undertaking is given a place and a function in the new scheme. The range of activities of a registered union is enlarged by enabling it to act as a representative of employees on behalf of non-members, who may choose such a union for the purpose of representing them in any proceedings.

(2) Provision is made for the maintenance of a list of approved unions and all registered unions that satisfy among others certain conditions regarding the regularity of meetings of the executive committee, Government audit of their accounts, and the avoidance of resort to strikes, so long as means of settlement and conciliation are available under the Act, will be placed on the list. Approved unions will derive substantial advantages under the Act including the right of inspecting any place where their members work, collecting union dues on the employer's premises and legal aid at Government expense in important proceedings before the Labour Court and the Industrial Court.

(3) The provisions relating to Labour Courts are an innovation so far as this country is concerned. An analysis of strikes and lock-outs occurring over a series of years has revealed the fact that a large proportion of stoppages arises out of disputes involving no substantial issues. Delay in the redress of grievances of workers with regard to these matters and one-sided exercise of discretion in dealing with them creates a large volume of bitterness and discontent which lead to frequent disturbances of the peace of the industry and cause serious loss of production and workers' earnings.

The conciliation procedure in the Act of 1938 has not been found

to be quite suitable for dealing with disputes of this character, both because of the length of time which the proceedings take and the lack of finality at the end of the proceedings. A remedy for this will be found in Labour Courts which will be instituted under the new Act, to ensure impartial and relatively quick decisions in references regarding illegal changes, illegal strikes and lock-outs and the complaints that either side may bring up.

The new clauses relating to the manner of modification of standing orders are designed to secure a similar purpose.

(4) The maximum duration of conciliation proceedings has been very much curtailed and substitutes for a notice of change have been recognized to avoid delay in initiating the actual work of conciliation.

(5) Provision is made for setting up joint committees of representatives of employers and employees in various occupations and undertakings in an industry. This is a device for establishing direct and continuous touch between the representatives of employers and workers and for securing speedy consideration and disposal of the difficulties which arise from day to day in employer and employee relations. This is a familiar arrangement in the United Kingdom and in several other countries and its adoption has been recommended by the Royal Commission on Indian Labour.

(6) The clause relating to references of disputes to the Industrial Court, at the instance of Government, is redrafted to give it a wider field for the exercise of discretion. Such a course has been rendered necessary by the frequent calls on Government, during recent years, from employers as well as employees, for compulsory adjudication of disputes.

(7) Apart from reducing the penalties for going on or continuing on an illegal strike the Bill removes an ambiguity regarding the circumstances in which the penalties in consequence of an illegal strike arise.

(8) Provision is also made to enable Government to set up a Court of Enquiry, when the procedure is considered appropriate in a particular situation or dispute in an industry.

(9) The maintenance by Government of a record of conditions, usages and conventions relating to labour in each undertaking will be compulsory. This information will prove helpful to the authorities under the Act in settling disputes and determining whether a certain change was illegal or not.

(10) The powers and duties of the Labour Officer are expanded so as to enable him to function more efficiently.

(11) Annual election of representatives of employees is provided for in lieu of the present system of election of representatives for a particular dispute only.

There are in addition a number of minor changes in the wording

of several clauses to surmount certain legal and administrative difficulties which have been encountered in the working of the Act of 1938.

(12) In view of the scope of the Bill which embraces a much wider field than the Bombay Industrial Disputes Act, 1938, it has been entitled the Bombay Industrial Relations Bill."

The Application of the Act: The new Act came into force immediately only in respect of the industries which had been covered by the Bombay Industrial Disputes Act, 1938. The Provincial Government had, however, power to apply all or any of the provisions of the Act to other industries. Though a number of miscellaneous industries were brought under the coverage of this law, the main industry to which it was applied was the textile industry, including all cotton textile units throughout the province of Bombay and the silk and woollen textile units in prescribed areas. The 1946 Act was even more elaborate than the 1938 Act and could not have been applied to any large number of industries even throughout the province of Bombay.

Registration of Unions and Representation of Employees: The new Act provided for the registration of three types of unions, viz., representative unions, qualified unions and primary unions (section 13). It abolished "occupational" unions and made no mention of recognition of unions as a condition precedent to registration. Any union which had for the whole period of three months next preceding the date of application a membership of not less than 15 per cent of the total number of employees employed in an industry in a local area could apply for registration as a representative union for that industry in that local area. Where two or more unions fulfilled the prescribed conditions, the one with the largest membership of employees was entitled to registration (proviso 3 to section 14). If in a local area no union had qualified for registration as a representative union in respect of an industry, a union which had during the three months next preceding its application a membership of not less than 5 per cent of the total number of employees employed in the industry in the area could apply for registration as a qualified union for that industry in that area. If, however, there was no qualified union even in an industry in an area, a union having a membership of not less than 15 per cent of the total number of employees employed in any undertaking in the industry could apply for registration as a primary union for that industry in that local area. Thus the representative union and the qualified union were unions in respect of a whole industry in a local area whereas a primary union was in respect of a particular undertaking in the industry in that area.

If in a local area more than one category of unions applied for registration, a representative union had preference over a qualified union and a qualified union over a primary union (second proviso to section 14).

The following were entitled to act, in the order of preference specified, as

the representative of employees in an industry in a local area (section 30):

(*i*) a representative union for such industry;
(*ii*) a qualified or primary union of which the majority of employees directly affected by the change concerned were members;
(*iii*) any qualified or primary union in respect of such industry authorized in the prescribed manner in that behalf by the employees concerned;
(*iv*) the Labour Officer if authorized by the employees concerned;
(*v*) the persons elected by the employees in accordance with the prescribed provisions; and
(*vi*) the Labour Officer.

This priority meant, in effect, that a representative union could act as the representative of employees even on behalf of non-members. It was not necessary, as in the 1938 Act, that some of the employees directly affected by the change should belong to the representative union. Where there was no representative union, a qualified or primary union of which the majority of employees directly affected by the change were members could act on behalf of the employees. Where such a union did not fulfil the condition of majority, it could still act if authorized by the employees concerned. A Labour Officer authorized by the employees could represent employees in preference to persons elected by the employees. As regards the election of persons to represent employees, the 1938 Act required election in respect of each change or dispute, while the 1946 Act demanded election only once a year (section 28). This ensured continuity of negotiations over a period of at least one year. The lowest category of the representative of employees was the Labour Officer without any special authorization. Where a set of employees had made no arrangements for their representation in respect of a dispute, the Labour Officer of the area could represent them, but he was not entitled to enter into any agreement unless the employees accepted its terms in the prescribed manner (second proviso to section 30).

Though employees could be represented in the manner mentioned above, an individual employee was entitled to appear through any person in all proceedings before the Industrial Court, in proceedings before a Labour Court for deciding whether a strike, lock-out or change or an order passed by the employer was illegal and in other proceedings when the Industrial Court permitted such appearance (section 33). However, legal practitioners could be permitted to appear only before a Labour Court or the Industrial Court.

Approved Unions: The new Act made provision for the entry of unions on an "approved" list. Such approved unions undertook certain obligations (section 23) and became entitled to certain rights and privileges (section 25). A union seeking entry into the approved list had to provide by rules:

(*i*) that its membership subscription was not less than four annas per month;
(*ii*) that its executive committee should meet at intervals of not more than three months;
(*iii*) that all resolutions passed should be recorded in a minute book;
(*iv*) that an auditor appointed by Government should audit its accounts at least once in each financial year;
(*v*) that every industrial dispute in which a settlement was not reached by conciliation would be offered to be submitted to arbitration, and that arbitration would not be refused by it in any dispute; and
(*vi*) that no strike would be sanctioned or resorted to by it unless all the methods provided by the Act had been exhausted and the majority of the members voted by ballot in favour of the strike.

In return for these assurances of responsibility, the Act laid down that the approved union should be permitted by the employer:

(*a*) to collect subscriptions from members on the premises of the establishment where wages were paid to them;
(*b*) to put up notice boards on the premises;
(*c*) to hold discussions on the premises of the undertaking with members for the purpose of the prevention or settlement of an industrial dispute;
(*d*) to meet and discuss with the employer or any person appointed by him for that purpose the grievances of its members employed in the undertaking; and
(*e*) to inspect any place where a member was employed.

An approved union was also entitled to apply to the Provincial Government for legal aid in proceedings before a Labour Court or the Industrial Court.

Standing Orders: Standing orders in respect of matters specified in Schedule I were to be submitted by the employer and settled by the Commissioner of Labour. The Act contained provisions for appeal to, and review by, the Industrial Court (sections 36 and 37). The standing orders framed were not liable to be altered for a period of one year from the date of their coming into operation except in appeal or review (section 38). After the expiry of one year, any party could apply for a change to the Commissioner of Labour and standing orders could then be altered in accordance with the prescribed procedure. Since a procedure for alteration of standing orders was contained in the Act itself, no notice of change in respect of the matters covered by them was necessary under the Act.

Notice of Change: An employer intending to effect any change in respect of an industrial matter specified in Schedule II was required to give notice of

such intention in the prescribed form to the representative of employees (section 42). Schedule II mentioned ten important matters including reduction in the number of persons employed, dismissal of an employee except as provided for in the standing orders, rationalization, withdrawal of recognition of unions, withdrawal of any customary concession or privilege or change in the rules of discipline, wages and hours of work and rest intervals. Where an employee desired a change in respect of an industrial matter not specified in Schedule I or III, he was required to give notice in the prescribed form to the employer. This meant that if he desired a change in respect of a matter mentioned in Schedule II or in respect of a matter other than those mentioned in the three Schedules, he had to give notice. Schedule I referred to matters in respect of which standing orders had to be framed. As standing orders could be got changed in the prescribed manner, there was no need to give any notice of change in respect of the matters mentioned in Schedule I. Schedule III mentioned a number of matters such as the adequacy and quality of materials and equipment, the construction and interpretation of awards, agreements and settlements, the payment of compensation for stoppages, health, safety and welfare of employees, etc. Any disputes regarding these could be taken direct to the Labour Court (sub-section (4) of section 42), and that was why no formal notice of change in regard to these matters was prescribed. Similarly, an order passed by an employer under the standing orders or any industrial matter arising out of the application and interpretation of standing orders could also be taken direct to the Labour Court. In other words, notices of change were required only in respect of matters which, if not resolved, were likely to become industrial disputes and for the resolution of which no specific procedure had been indicated in the Act.

If within seven days from the date of service of a notice an agreement was arrived at between the employer and the employees, a memorandum of such agreement signed by the parties was drawn up and forwarded to the Chief Conciliator, the Registrar and the Labour Officer. The Registrar entered the agreement in a register. If, however, the proposed change was objected to by the employer or the employees, the party which gave the notice was required to forward to the Registrar, the Chief Conciliator and the conciliator of the local area a full statement of the case within 15 days from the date of service of the notice. On receipt of such a statement, the conciliator entered the dispute in the register kept for the purpose and thereupon conciliation proceedings were deemed to have commenced.

Conciliation: The scheme of the Act was that conciliation of all industrial disputes would be compulsory except in three cases where it was barred, viz., (*a*) when a submission in respect of the dispute was in force, the matter then being bound to be submitted to arbitration, (*b*) when a reference of the dispute to compulsory arbitration was made by the Provincial Government under sections 72 or 73 of the Act, and (*c*) when the matter in dispute was

covered by a registered agreement, settlement, submission or award. The conciliator had the same powers under the new Act as under the old one. If an agreement was arrived at in the course of the conciliation, a report together with a memorandum of the terms of the settlement was required to be submitted, and if no settlement was arrived at, a full report indicating the reasons for the failure of the conciliation had to be submitted to the Chief Conciliator and by him to the Provincial Government. The Provincial Government was at liberty to send the dispute at any time to a Board of Conciliation for settlement. If both the parties desired such a reference, it was incumbent on the Government to make the reference. The proceedings before a conciliator were to be held in camera but the proceedings before a Board could be held either in public or in camera as the Board decided (section 60). A conciliator or a Board of Conciliation could refer any question of law to the Industrial Court for decision. In the event of failure of conciliation, the conciliator had to ascertain from the parties whether they were willing to submit the dispute to arbitration. The total period fixed for the completion of all stages of conciliation proceedings was one month, but the Provincial Government was empowered to extend that period by a further period of a fortnight at a time but not exceeding, in any case, two months in the aggregate. The total period of conciliation could not, in any case, exceed three months from the date of its commencement. It was, of course, open to the parties to agree to extend the period fixed for the completion of the conciliation and such period was to be excluded in computing the time limit.

Arbitration: The Act provided for both voluntary and compulsory arbitration. An employer and a representative union or any other registered union which was a representative of employees could, by a written agreement, agree to submit any present or future industrial dispute or class of such disputes to arbitration. Such an agreement was called a submission (section 66). The arbitration could be by an independent private person or by a Labour Court or the Industrial Court. Under the 1938 Act, a registered union could enter into a submission even if it was not a representative of employees, but the proceedings in such a case would have bound only the members of the union and not other employees in the centre. Under the new law, as a submission could be entered into only by a union which was representative of employees, the award of the arbitrator would be applicable to all the employees in the centre whether they were members of the union or not.

Arbitration under the authority of a submission was naturally voluntary, but the Provincial Government had powers to refer any dispute to arbitration compulsorily (section 73). The powers of the Provincial Government were wide in this respect. A dispute which was likely to lead to a serious outbreak of disorder or a breach of the public peace or one that was likely

to cause serious or prolonged hardship to the community could be referred to arbitration. A dispute that was likely to affect either the industry or the prospects of employment adversely could also be referred to arbitration. Apart from these specific cases, the Provincial Government could refer a dispute to arbitration if it was not likely to be settled by other means or if such reference was deemed necessary in the public interest. General references to compulsory arbitration could be made only to the Industrial Court, but there were two other types of references which could be made either to a Labour Court or to the Industrial Court. These were submissions in which the parties had not indicated the arbitrator or which involved industrial disputes between different sections of employees (sections 71 and 72). The award of the arbitrator was required to be published in the prescribed manner and would come into operation on the date specified in the award or where no such date was specified, on the date on which it was published.

Industrial Court: The Industrial Court, or more fully the Court of Industrial Arbitration, was to consist of three or more members who were or had been judges of a High Court or were eligible for being appointed a judge of a High Court. Apart from arbitration, the Industrial Court had wide powers of hearing appeals from the decisions of Labour Courts. In respect of offences punishable under the Act, it was to have all the powers of the High Court of Judicature at Bombay under the Code of Criminal Procedure 1898.

Labour Courts: Of a slightly lower category were the Labour Courts appointed for specified local areas. Labour Courts were to be presided over by persons who possessed qualifications for entering the subordinate civil judicial service in the Province of Bombay. Apart from undertaking arbitration of industrial disputes referred to them either by the parties or by the Provincial Government, Labour Courts could decide disputes regarding such matters as the propriety or legality of an order passed by an employer under the standing orders, the application and interpretation of standing orders, and changes made by an employer or desired by an employee in respect of matters specified in Schedule III (section 78). Labour Courts could also try offences punishable under the Act, exercising for that purpose the powers of a First Class Magistrate. They could decide whether a strike, lock-out or change was legal or illegal under the Act. They could also require an employer to withdraw any change which was held by them to be illegal or to carry out any change which was a matter in issue in any proceeding before them.

By virtue of their powers, Labour Courts could deal with many matters which were beyond the purview of the Bombay Industrial Disputes Act, 1938. Under the 1938 Act, it was not possible to question the decision of an employer on matters covered by the standing orders so long as the techni-

calities pertaining to the standing orders had been carried out. By virtue of its power to deal with the propriety of an order passed by an employer under the standing orders, a Labour Court could, under the new Act, virtually sit in appeal over the judgment of the employer. It was no longer sufficient that an order passed by an employer was in terms of the standing orders; it had to be a proper one also. The Labour Court was also entitled to decide disputes relating to the application and interpretation of standing orders.

Schedule III dealt with matters affecting health, safety and welfare of the employees, including such matters as water, dining sheds, rest sheds, latrines, urinals, crèches, restaurants, etc. It also included the construction and interpretation of awards, agreements and settlements and questions relating to the reinstatement of dismissed employees, the payment of compensation for work stoppages, the adequacy and quality of material and equipment supplied to workers, etc. These were not matters of any great moment, and yet they were such as to lead to constant disputes. In respect of these matters, employees could directly approach the Labour Court without any preliminary procedures.

Illegal Strikes and Lock-outs : Strikes and lock-outs were made illegal in a variety of circumstances (sections 97 and 98). Strikes and lock-outs called without giving the required notice of change, or during conciliation or arbitration proceedings, or during the various intermediate stages leading to such conciliation or arbitration were illegal. Similarly, any strike or lock-out called in contravention of the terms of a registered agreement or a settlement or award was also illegal.

Quite substantial penalties were prescribed for offences under the Act. A registered agreement or settlement or award ceased to have effect on the date specified in it or if no such date was specified, on the expiry of a period of two months from the date on which notice in writing to terminate such agreement, settlement or award was given by one party to the other.

On the whole, the Act was far too comprehensive and involved for Indian conditions. It had various types of registered unions. Its very attempt to cater for, and accommodate, unions of different sizes and strengths stood in the way of the development of powerful unions. If recognition could be given to two or three classes of unions, even though not at the same time, and the weaker ones were also recognized for certain purposes, there would not be much incentive for the creation of really strong and representative unions. At the same time, it must be said that the idea of the representative union has gained ground in Bombay far more firmly than anywhere else in India. The object of the Act was thus excellent; its scope was perhaps overambitious; its implementation must have been hampered to a certain extent by its over-elaboration. Nevertheless, the Act has proved a success in a limited sphere because of the capacity of both employers and workers, particularly

in the city of Bombay, to cope with a mass of elaborate details. The fact that the Bombay Government themselves have utilized the Central Industrial Disputes Act, 1947 for settlement of disputes in a large number of industries in the State shows that an elaborate law like the Bombay Industrial Relations Act, 1946 can succeed only in a few big cities with well-developed trade unions among the local employees.

Before proceeding to a consideration of the Industrial Disputes Act, 1947, which is the law most commonly used in India for the settlement of industrial disputes, it is not necessary to consider the legislations passed by certain other Provincial Governments such as those of the United Provinces, of the Central Provinces and Berar, and of Travancore-Cochin. They introduced no new principles which have proved to be of any abiding value in the settlement of industrial disputes. They merely reproduced to varying degrees provisions from Rule 81A of the Defence of India Rules, the Bombay Industrial Relations Act, 1946 and the Central Industrial Disputes Act, 1947.

CHAPTER VII

THE INDUSTRIAL DISPUTES ACT, 1947

As MENTIONED earlier, Rule 81A of the Defence of India Rules introduced for the first time, in the field of industrial relations, the principle of compulsory arbitration, whereby the parties to an industrial dispute were deprived of their right to resort to direct action as soon as the dispute was referred for adjudication to a tribunal. This experiment was hailed in the early days of adjudication as a great success. The settlement of the first flush of disputes through the newly-discovered machinery of compulsory arbitration gave different types of satisfactions—but satisfactions nevertheless—to all parties concerned. The workers invariably got a good portion of their demands conceded, largely because of the accumulation of legitimate, but unsatisfied, demands under war conditions. The employers found it convenient to avoid work stoppages at a time when the market was all in their favour. Governments discovered that here was an easy way of disposing of troublesome labour disputes—one might almost say, settlement without tears. A mere notification in a gazette setting up a tribunal was the magic wand to put strife and struggle to sleep. To secure reference of a dispute to adjudication was for unions tantamount to going half way towards success. So many puffed-up authorities, particularly after Independence, started talking in terms of "giving" an adjudication—as if they were bestowing a great boon or handing over the counter the title deeds to increased wages and emoluments. Some of our popular ministers must have felt happy over being able to distribute adjudications as a matter of patronage even as earlier administrations used to award titles. Thus it was that compulsory adjudication appeared to be popular all round. Nobody bothered, for the time being, to consider what its long-term effects would be on trade union organization and collective bargaining.

Rule 81A of the Defence of India Rules was due to lapse on 1 October 1946, but the need for it had increased, rather than diminished, with the termination of the war. Industrial disputes had grown considerably, and production had been seriously affected. The provisions of the Defence of India Rules were, therefore, kept in force for a further period of six months by the Emergency Powers (Continuance) Ordinance, 1946. The industrial situation, however, was such that temporary measures for a short period were not considered adequate. It was necessary to evolve a permanent piece of legislation and that too quickly; there was no time for experimentation. Nothing was easier than to embody the principle of compulsory arbitration in a new law along with provisions for conciliation and enquiry. After a summary consultation with the representatives of employers and workers, the Central

Government introduced the Industrial Disputes Bill in the Central Legislative Assembly towards the end of 1946.

Statement of Objects and Reasons: The objectives of the Bill were explained at length in the Statement of Objects and Reasons which read as follows:

"Experience of the working of the Trade Disputes Act, 1929 has revealed that its main defect is that while restraints have been imposed on the rights of strike and lock-out in public utility services, no provision has been made to render the proceedings institutable under the Act for the settlement of an industrial dispute, either by reference to a Board of Conciliation or to a Court of Inquiry, conclusive and binding on the parties to the dispute. This defect was overcome during the war by empowering, under Rule 81A of the Defence of India Rules, the Central Government to refer industrial disputes to adjudicators and to enforce their awards. Rule 81A, which was to lapse on 1 October 1946 is being kept in force by the Emergency Powers (Continuance) Ordinance, 1946 for a further period of six months, and as industrial unrest, in checking which this rule has proved useful, is gaining momentum due to the stress of post-war industrial re-adjustments, the need of permanent legislation in replacement of this rule, is self-evident. This Bill embodies the essential principles of Rule 81A, which have proved generally acceptable to both employers and workmen, retaining intact, for the most part, the provisions of the Trade Disputes Act, 1929.

The two new institutions for the prevention and settlement of industrial disputes provided for in the Bill are Works Committees, consisting of representatives of employers and workmen, and Industrial Tribunals consisting of one or more members possessing qualifications ordinarily required for appointment as Judge of a High Court. Power has been given to the appropriate Government to require Works Committees to be constituted in every industrial establishment employing 100 workmen or more and their duties will be to remove causes of friction between the employers and workmen in the day-to-day working of the establishments and to promote measures of securing amity and good relations between them. Industrial peace will be most enduring where it is founded on voluntary settlement, and it is hoped that the Works Committees will render recourse to the remaining machinery provided for in the Bill for the settlement of disputes infrequent. A reference to an Industrial Tribunal will lie where both parties to any industrial dispute apply for such reference and also where the appropriate Government considers it expedient so to do. An award of a Tribunal may be enforced either wholly or in part by the appropriate Government for a period not exceeding one year. The power to refer disputes to Industrial Tribunals and enforce their awards is an essential corollary to the obligation that lies on the Government to secure conclusive determination of the

disputes with a view to redressing the legitimate grievances of the parties thereto, such obligation arising from the imposition of restraints on the rights of strike and lock-out, which must remain inviolate, except where considerations of public interest over-ride such rights.

The Bill also seeks to re-orient the administration of the conciliation machinery provided in the Trade Disputes Act. Conciliation will be compulsory in all disputes in public utility services and optional in the case of other industrial establishments. With a view to expedite conciliation proceedings, time limits have been prescribed for conclusion thereof—14 days in the case of conciliation officers and two months in the case of Board of Conciliation from the date of notice of strike. A settlement arrived at in the course of conciliation proceedings will be binding for such period as may be agreed upon between the parties and where no period is agreed upon, for a period of one year, and will continue to be binding until revoked by a two months' notice by either party to the dispute.

Another important new feature of the Bill relates to the prohibition of strikes and lock-outs during the pendency of conciliation and adjudication proceedings, of settlements reached in the course of conciliation proceedings and of awards of Industrial Tribunals declared binding by the appropriate Government. The underlying argument is that where a dispute has been referred to conciliation or adjudication, a strike or lock-out in furtherance thereof is both unnecessary and inexpedient. Where, on the date of reference to conciliation or adjudication, a strike or lock-out is already in existence, power is given to the appropriate Government to prohibit its continuance lest the chances of settlement or speedy determination of the dispute should be jeopardized.

The Bill also empowers the appropriate Government to declare, if public interest or emergency so requires, by notification in the official Gazette, any industry to be a public utility service for such period, if any, as may be specified in the notification."

The Act provided for conciliation through conciliation officers and boards of conciliation, enquiry through courts of inquiry and adjudication, that is, compulsory arbitration, through industrial tribunals. Settlements arrived at in the course of conciliation proceedings and awards made by industrial tribunals were binding on the parties for certain periods. The reports of courts of inquiries were to be published, but they had no binding force and were meant simply to canvass public opinion in support of a just settlement. There was provision for giving a 14 days' notice of strike or lock-out in a public utility service. Where a dispute related to a public utility service and a notice of strike or lock-out had been given, it was incumbent on Government to make a reference to one of a number of authorities unless it considered that the notice had been frivolously and vexatiously given or that it would be inexpedient to do so. Strikes and lock-outs were declared to be

illegal generally during the pendency of proceedings and during the operation of settlements and awards. There was provision for the prohibition of an existing strike or lock-out on the reference of a dispute for adjudication.

Subsequent Amending Acts: The Act, as passed in 1947, was a comparatively simple one. As situations developed and policy in the field of industrial relations changed, the Act had to be amended on several occasions. A list of the more important amendments made since 1947[1] is given below:

(*i*) The Industrial Disputes (Banking and Insurance Companies) Act, 1949 (Act 54 of 1949),
(*ii*) The Repealing and Amending Act, 1950 (Act 35 of 1950),
(*iii*) The Industrial Disputes (Appellate Tribunal) Act, 1950 (Act 48 of 1950),
(*iv*) The Industrial Disputes (Amendment and Temporary Provisions) Act, 1951 (Act 40 of 1951),
(*v*) The Industrial Disputes (Amendment) Act, 1952 (Act 18 of 1952),
(*vi*) The Industrial Disputes (Amendment) Act, 1953 (Act 43 of 1953),
(*vii*) The Industrial Disputes (Amendment) Act, 1954 (Act 48 of 1954),
(*viii*) The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 (Act 36 of 1956),
(*ix*) The Industrial Disputes (Amendment) Act, 1956 (Act 41 of 1956),
(*x*) The Industrial Disputes (Amendment) Act, 1957 (Act 18 of 1957).

The Industrial Disputes (Banking and Insurance Companies) Act, 1949 was enacted with a view to meeting a large-scale dispute which had developed in the banking industry. Till then industrial relations in banks had been the concern of Provincial Governments, with the result that a bank with branches in several provinces had to deal with a number of Provincial Governments. The differing awards of industrial tribunals set up by the various Provinces led to difficulties in the maintenance of uniform terms and conditions of service by big banking establishments with branches all over the country. By this amending Act, the industrial relations in banks and insurance companies with branches in more than one Province were taken over by the Central Government so that a common tribunal could be set up with jurisdiction over the establishments throughout the country.

The Industrial Disputes (Appellate Tribunal) Act, 1950 set up an Appellate Tribunal to which appeals from the awards of industrial tribunals could be preferred. As the number of tribunals in the country increased, their decisions on the same subject were often divergent and it became difficult for both employers and workers to decide which view to accept and which to reject. The statement of objects and reasons said that "some tribunals have been

[1] Reference to a few recent amendments has been given at the end of this chapter.

known to take divergent views on important issues such as profit-sharing, retirement benefits, etc. Industrial undertakings with branches in more than one Province, and particularly those that employ transferable staff on an all-India basis, have to face anomalies and complications arising out of the varying decisions of Tribunals in different Provinces." The awards of tribunals often involved payment of large sums of money, and employers were insistent that in certain circumstances the right of appeal was essential not merely in their own interests but in the interests of the economy of the country as a whole. An Appellate Tribunal was accordingly set up and functioned until it was abolished by the amending Act of 1956. The agitation for the abolition of the Appellate Tribunal came primarily from trade unions which claimed that the working of the Appellate Tribunal was both dilatory and unsatisfactory.

The Industrial Disputes (Amendment) Act, 1952 introduced a measure of definiteness in regard to several provisions found in the Act. For instance, the words "if any industrial dispute exists or is apprehended, the appropriate Government may, by order in writing, refer the dispute to a Board etc." had led to interpretations that the existence or apprehension of the dispute could be challenged and had to be proved. These words were replaced by the words "where the appropriate Government is of opinion that any industrial dispute exists or is apprehended etc." The amending Act further laid down that where an order referring a dispute to a tribunal specified the points of dispute for adjudication, the tribunal was to confine its adjudication to those points. Tribunals had, in the past, ascertained for themselves the points at issue and had often wandered far from the original dispute between the parties. Another important provision of the amending Act was the inclusion as parties to a dispute pending before a tribunal other establishments if the Government was of opinion that those establishments were likely to be interested in, or affected by, the pending dispute.

The Industrial Disputes (Amendment) Act, 1953 was a very important piece of legislation. It introduced for the first time statutory provisions for payment of compensation for lay-off and retrenchment. If an establishment had to lay-off workers on account of temporary difficulties, it was required to pay them certain amounts as lay-off compensation. Similarly, for workers who were retrenched, prior notice and retrenchment compensation based on the length of service of the workers were made compulsory. This was an important item of social security which had been mooted for a long time but came to a head with the crisis that developed in the textile industry in the latter half of 1953.

The Industrial Disputes (Amendment and Miscellaneous Provisions) Act, 1956 is the most important amending Act so far passed. It abolished the Appellate Tribunal, but in order to meet the criticism that uncoordinated and piecemeal adjudication might again cause inconvenience to employers having establishments in more than one State, it provided for a three-tier

system of original tribunals, viz., the labour court, the industrial tribunal and the national tribunal. Reference to national tribunals was to be made exclusively by the Central Government to cover disputes which involved questions of national importance or which were of such a nature that establishments situated in more than one State were likely to be interested in, or affected by, them. Provision was also made for a machinery for voluntary arbitration if the parties to a dispute chose that method of settlement. Quite substantial changes were made in section 33 of the Act which, during the pendency of proceedings before a conciliation officer or a board or before a court of inquiry or tribunal, had prohibited any alteration in the conditions of service of workmen and any punishment, whether by dismissal or otherwise, of the workmen concerned, except with the permission of the authority before which the proceedings were pending. This prohibition was causing serious inconvenience to employers who found it impossible to get rid of undesirable workers for long periods on account of the pendency of proceedings before boards and tribunals. The amendment provided an alternative arrangement to meet the situation. It made a distinction between matters and misconducts connected with the dispute and those not so connected, and while continuing to protect workers, particularly office-bearers, from victimization, restored a fair measure of freedom to employers to deal with their workers in accordance with the Standing Orders. Another important provision of the amending legislation related to the giving of prior notice whenever it was proposed to make any change in certain prescribed matters.

The other amending Acts are not of any great importance and need not be gone into in detail. We shall now proceed to an examination of the more important subjects covered by the Industrial Disputes Act, 1947, as amended from time to time, with a view to bringing out the principles underlying it and the manner in which it fulfils the objects the legislature had in view. In doing so, it should be made clear that notwithstanding references to decided cases, all that is attempted here is a broad survey of the scope and implications of the Industrial Disputes Act and not, in any sense, an annotation of the provisions of the law.

Constitutionality of the Act: As was only to be expected, the introduction of compulsory adjudication, which resulted in the curtailment of the employer's right to conduct his business as it suited him, was not to go unchallenged. There were two lines of attack against the new legislation. The first, which was put forward before the new Constitution came into force, was that the Act nullified the sanctity of contract and settled industrial disputes by a law which did not exist and had to be invented by each industrial tribunal on each occasion. The second, which was put forward after the coming into force of the Constitution, was that the Act nullified the provisions of the Constitution guaranteeing certain fundamental rights to all citizens alike.

The sanctity of private contract has been the subject of a number of decided cases in courts. In one of the earlier cases[1a] heard after the coming into force of the Industrial Disputes Act, the plea put forward was that the industrial tribunal could only enforce the terms of the contract between the parties and that it could not add to or alter the terms of the contract. That plea was completely negatived. Industrial disputes, it was observed, rarely related to the infringement of existing contracts between the management and the workmen and that in almost every case the workmen were agitating for a higher standard of living generally. Such demands were for "something beyond the terms of the agreement between the parties, to meet the ever-advancing ideals of the public with regard to the conditions under which the employees should work." The High Court proceeded to say that "if one were to seek to enumerate all the amenities granted by some managements and often demanded by the workmen, it would indeed be a long list; and it is because some managements refuse to provide such amenities as are granted by other managements to their workmen that disputes frequently arise." In arbitrating in an industrial dispute, the tribunal was ordinarily concerned not with the administration of law but with the settlement of a dispute which had arisen between the management and the workmen.

In the adjudication of industrial disputes, courts "have often to pass into a region of more or less uncertainty in which the only guiding principles are fairness, reasonableness and equality."[2] The decision is what the court considers just and fair in each case. It is certainly "not arbitrary in the sense that it is fanciful and unconnected with the evidence in, and in the circumstances of, the case." The yardstick of justice and equity itself changes with changes in social, political and economic outlook and with changes in the conditions of individual and national life. "The ultimate decisions of industrial tribunals have to be determined not merely by the application of legal principles to ascertained facts, but by considerations of policy also."

That the legislature was within its rights in interfering with the sanctity of private contract in labour legislation was unequivocally stated by the Federal Court in the *Province of Bombay* vs. *Western India Automobile Association*.[3] "We are no longer living in the far off days, which according to some may be halcyon and according to others wicked and evil days, when the rights of employers and employees were governed purely by contract. The employer went out into the open market, employed whom he liked, paid what he liked, dismissed him when he liked and the State permitted him to do so. As I was saying, the whole trend of labour legislation is to protect labour against the very play of contractualization which may harm him and against which he is

[1a] Sri C. Bhakthavatsalu Nayudu *vs.* The Chrome Leather Co. Ltd., 1949, I. L.L.J., 134.

[2] Shree Meenakshi Mills *vs.* State of Madras. A.I.R. 1951 S.C., 974 and 978.

[3] 1949 I.F.J.R. 12.

not strong enough to protect himself. Therefore, the mere fact that this particular legislation interferes with the rights of the contract or the sanctity of the contract cannot be an argument for holding that such encroachment upon the private life cannot be permitted."

The whole of industrial law in India today constitutes an inroad upon the common law rights of the employer.[4] We no longer live in the age when the rights of workers were regulated solely by the contract between the employees and the employer. Whatever the provisions of the contract, the industrial law is entitled to interfere with those provisions in the interests of labour.

The second line of attack from the point of view of constitutionality is the more important one. According to Article 19(1)(g) of the Constitution, all citizens have the right to practise any profession, or to carry on any occupation, trade or business, but this is subject to the restriction contained in clause (6) of that Article, viz., that nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by that sub-clause. Article 14 of the Constitution which says that the State shall not deny to any person equality before the law or the equal protection of the laws is another provision used for challenging the constitutionality of the Industrial Disputes Act.

The line of argument adopted in such challenge is that Article 19(1)(g) of the Constitution confers on all citizens the fundamental right to practise any profession or to carry on any occupation, trade or business and that the provisions of the Industrial Disputes Act, which put restrictions on the employer's right to carry on his business in such manner as he deems appropriate, have the result of depriving the employer of that fundamental right. The power vested in the appropriate Government to refer disputes in some units of an industry, but not in others, to a tribunal for adjudication or, in fact, to decide whether a dispute should or should not be referred for adjudication has the effect of discriminating between one unit and another.

These attacks against the constitutionality of the Act have been repelled time and again by courts. The right conferred by Article 19(1)(g) of the Constitution to carry on any business is not absolute. Undeniably the State has got the right to regulate any business. Businesses which are likely to prove dangerous to public safety or public health may be subjected to severe restrictive regulations, as for instance, the manufacture and sale of ammunition. In the interests of a large section of the public, viz., industrial workers, the legislature may provide, whether directly or indirectly, through administrative bodies for the fixing of reasonable and adequate wages and generally regulate the conditions of service. In the absence of a guarantee of the freedom of contract, it would not be unreasonable to presume that the freedom of

[4] Mervin Albert Veiyra *vs.* C. P. Fernandes & Co., A.I.R. 1957 Bombay, 100.

contract can, to a certain extent, be curtailed if such curtailment is reasonable and in the general interests of the general public.[5]

In the present social set-up it is impossible to hold that a legislation intended to bring about harmonious relationship between the employers and the employees in the interests of industrial peace is an unreasonable restriction upon the fundamental right guaranteed under Article 19(1)(g) of the Constitution. Indeed the Industrial Disputes Act by providing a machinery to smoothen out the disputes between the employers and employees enables the employer to carry out his trade or business more effectively than otherwise he could do. In the interests of the general public, and particularly when the freedom of contract has not been guaranteed by the Constitution, the provisions of the Act empowering the tribunals to decide a dispute between parties notwithstanding their prior agreement to the contrary cannot be held to be an unreasonable restriction on the fundamental right to carry on the trade.[6]

The discretion vested in the appropriate Government to refer disputes to one or the other of the various authorities is not an unfettered or an uncontrolled discretion nor an unguided one because the criteria for the exercise of such discretion are to be found within the terms of the Act itself. The purpose sought to be achieved by the Act has been well defined in the preamble of the Act. The achievement of one or the other of the objects in view by such references to boards or courts of enquiry or industrial tribunals must guide and control the exercise of the discretion in that behalf by the appropriate Government. There is no scope, therefore, for the argument that the appropriate Government would be in a position to discriminate between one party and the other.[7]

Far from impeding the right of the employer to carry on his trade or profession, the Industrial Disputes Act, by providing a machinery for resolving disputes between employers and employees, enables the employer to conduct his trade or business more effectively than otherwise.

The question of the equal protection of the laws or equality before law does not arise in regard to industrial adjudication. Both the employer and the employees are given similar right to invoke the application of the provisions of the Act. Nothing done under the Industrial Disputes Act can even approximate to an acquisition or confiscation within the meaning of Article 31 of the Constitution.[8]

Thus it is now well-established law that the Industrial Disputes Act does not deprive the employer of any of his fundamental rights, that its operation does not involve any discrimination as between the various parties, and that it is constitutionally unassailable.

[5] Indian Metal and Metallurgical Corp. *vs.* Industrial Tribunal, Madras (1952), 1 M.L.J., 481.

[6] D.S.M. Association *vs.* Industrial Tribunal, Madurai, A.I.R. 1953 Madras, 102.

[7] N. T. F. Mills Ltd. *vs.* The Second Punjab Tribunal, A.I.R. 1957 S.C. 329.

[8] Shri Meenakshi Mills Ltd., Madurai *vs.* The State of Madras (1952) 2 M.L.J., 382.

Coverage of the Law: The Industrial Disputes Act makes provision primarily for the investigation and settlement of industrial disputes, and hence the coverage of the law will be guided by the definition of the term 'industrial dispute'. 'Industrial dispute' has been defined as any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person (clause (k) of section 2). This definition is thus tied down to the definitions of the expressions 'employer' and 'workman' which, in turn, depend on the definition of the term 'industry'. Thus it is really the definition of 'industry' which governs the coverage of the law. 'Industry' has been defined as any business, trade, undertaking, manufacture or calling of employers and includes any calling, service, employment, handicraft, or industrial occupation or avocation of workmen. This term is not used in the enactment in its lay or non-technical sense. The words such as business, trade, undertaking, calling of employers, service, employment, avocation of workmen, etc., give 'industry' such a wide meaning that one might as well enquire as to what is not covered by the definition.

A municipality would be included in the definition of industry and disputes which arise between municipalities and their employees in branches of work that can be said to be analogous to the carrying on of a trade or business could be dealt with under the Industrial Disputes Act.[9] The Supreme Court said that some of the functions of municipalities might appertain to, and partake of, the nature of an industry while others might not. For instance the supply of power and light or water and the maintenance of dairy farms and milk depots would be regarded as industry.

In another important case, *Corporation of City of Nagpur* vs. *Its Employees*,[9a] the Supreme Court elaborated on the views expressed by it in earlier cases. It confirmed the view that a dispute between a municipality and its employees in branches of work such as the conservancy department or the electricity department was an 'industrial dispute'. However, not all functions of a municipal corporation would be covered by the term 'industry'. A corporation set up statutorily might be entrusted with certain sovereign functions of the State such as the making of laws or the disposal of certain cases judicially. Such delegated functions of the State must be excluded from the scope of the definition of 'industry'. However, all normal functions of a municipality which pertained to service rendered by it to the public would be included within that term. If a department discharged a number of functions some of which came under the definition of 'industry' while others did not, the predominant function would determine the character of the department.

The word 'industry' does not inclade the learned professions of medicine

[9] D. N. Banerjee *vs.* P. R. Mukherjee, 1953 I L.L.J. 195.

[9a] A.I.R. 1960 S.C. 675.

and law, so that if a person practises as a barrister or a solicitor or a doctor, he is not carrying on an industry. But, according to earlier rulings, a firm of solicitors may not necessarily stand on the same footing and might be covered by the term 'industry'. The income of a partner in a solicitor's firm need not be proportionate to the services rendered by him. The complex set-up of a solicitor's firm where assistants other than professional men are also employed becomes an 'industry' though an individual practising will not be an industry.[10] There was a measure of conflict between the rulings relating to solicitors' firms being treated as industry. This has since been resolved by the Supreme Court's decision in a comparatively recent case.[10a] According to the Supreme Court, the words used in section 2(j) of the Act which defines 'industry' are of wide import, but even so, a line has to be drawn in a fair and just manner so as to determine what callings and services come within the purview of the definition and what do not. The feature which distinguishes an activity falling under the definition from one which does not is that for the production of goods or for the rendering of service, co-operation between the employer and his employees must be direct and must be essential. The work of the employees in a solicitor's firm has no direct or essential nexus or connection with the advice which the solicitor gives to his clients or the professional service which he renders to them. It is the character of the cooperation between the employer and his employees which affords a relevant test in determining whether an activity under consideration is an industry or not. This leads to the conclusion that the work of solicitors, whether carried on by an individual or by a firm, is not an 'industry' under section 2(j) of the Act. A dispute between the employer and the employees in a solicitor's firm is, therefore, not an 'industrial dispute'.

Even charitable hospitals might come under the term 'industry'.[11] The term 'undertaking' is not to be limited to profit-making enterprises, as otherwise the object of the Act would be frustrated in regard to many public enterprises. Therefore, public charitable institutions, hospitals, and local bodies such as municipalities would come within the meaning of the word 'undertaking' and consequently within the meaning of 'industrial dispute'.

The position of educational institutions was somewhat ambiguous until it was clarified by the Supreme Court in *University of Delhi vs. Ram Nath*.[11a] According to the Supreme Court, teachers employed in educational institutions are not 'workmen' under section 2(s) of the Act. If the employees of an institution are not 'workmen', the institution cannot be an 'industry'. The work

[10] Sandersons and Morgans *vs.* their employees, 1958 I L.L.J. 184

[10a] National Union of Commercial Employees *vs.* M. R. Meher, Industrial Tribunal, Bombay, 1962 I L.L.J. 241.

[11] Shri Vishudananda Saraswati Marwari Hospital *vs.* Its workmen, 1952 II L.L.J. 327; State of Bombay *vs.* Hospital Mazdoor Sabha A.I.R. 1960 S.C. 610.

[11a] 1963, II L.L.J. 335.

of imparting education carried on by educational institutions is, therefore, not an 'industry.' Any problems connected with teachers and their salaries are outside the purview of the Act. The subordinate staff of clerks, typists, peons, drivers, etc., plays such a minor and insignificant part that it would be unreasonable to allow such work to lend an industrial colour to the principal activity of the institution which is to impart education. It has, therefore, been held that all institutions which are primarily founded for the purpose of imparting education do not fall within the ambit of the definition of 'industry' in section 2(j) of the Act.

A non-profit making institution such as an automobile association which merely renders service to its members would nevertheless be an 'industry'.[12] What is important is not the profit motive but the relationship between employers and workers; even a club maintained for the benefit of its members would be covered by the Act.[13]

A chamber of commerce registered under the Act, a firm of chartered accountants and a hair-cutting saloon are all industries.

The clearest indication of the wide scope of the Act was afforded by the legislature itself when it specifically laid down through an amendment that banks and insurance companies having branches or other establishments in more than one State came within the sphere of the responsibility of the Central Government. Nothing would be farther from the popular concept of 'industry' than such white collar professions as banking and insurance.

When the scope of the Act is so wide, the question naturally arises as to what is not covered by the definition of 'industry'. Since all calling of employers and all avocations of workmen are covered, there would normally be no scope for practically any employment being left out of the purview of the Act. And yet something must have been left out as otherwise the term 'industry' would not have been so elaborately defined. The terms 'employer' and 'workman', though defined in the Act, have not been defined in precise terms. The definition of 'employer' is not exhaustive and that of 'workman' has been made imprecise by its being linked to the term 'industry'. It is fairly well-accepted that the "Regal or Sovereign" functions of Government cannot be brought under the definition of 'Industry'. These functions are supposed to include the legislative power, the administration of laws, and the judicial power. It is, therefore, quite possible that a regular Government office or a court of law may not be deemed to be an 'industry'. This also follows, to some extent, from the definition of 'employer' which says that in relation to an industry carried on by or under the authority of any department of the Central Government or a State Government, certain officials would be deemed to be employers. Obviously it is only an industry carried on by a

[12] Bombay Province *vs.* The Western India Automobile Association, A.I.R. 1949 Bombay, 141.

[13] Bengal Club *vs.* Shanti Ranjan, 1957 I L.L.J. 505.

Government, and not every office run by it, that will be covered by the Act. The distinction between industry and non-industry is, however, vague and it is only the discretion of the deciding authority, generally the higher law courts, that can ultimately determine whether an activity amounts to an industry or not.

Nature of Disputes Dealt with by the Act: The definition of the term 'industrial dispute' is the key to the type of disputes dealt with under the Act. 'Industrial dispute' means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person (clause (k) of section 2).

The meaning of the expression "any person" has given rise to much explanation and interpretation. Is it synonymous with the words "any workman" or does it refer to anybody anywhere, that is, whether workman or an outsider? In an important judgment of the Supreme Court[14] it has been held that this expression cannot be completely equated with "any workman." Before the amendments of 1956, the expression 'workman' did not include a workman who had already been discharged before the dispute as it included only a workman discharged "during" the dispute. If the expression "any person" were to be strictly equated with "any workman", there could be no industrial dispute, prior to 1956, with regard to a workman who had been discharged earlier than the dispute, even though the discharge itself had led to the dispute. In using the expression "any person" rather than "any workman" in the definition of industrial dispute, the legislature must have put it beyond any doubt that the non-employment of such a dismissed workman was also within the ambit of an industrial dispute.

On the other hand, if the expression is given its normal dictionary meaning "of anybody or everybody in this wide world", the definition of 'industrial dispute' will become so wide as to become inconsistent not merely with the objects and other provisions of the Act but with the other parts of that very definition clause. The Supreme Court laid down that the following limitations should be put on the meaning of the expression "any person":

(*i*) the dispute between employers and employers, employers and workmen, or between workmen and workmen must be a real dispute capable of settlement or adjudication by directing one of the parties to the dispute to give necessary relief to the other, and

(*ii*) the parties to the dispute must be directly or substantially interested therein, so that if workmen raise a dispute, it must relate to the establishment or part of establishment in which they are employed.

[14] Assam Cha Karmachari Sangha *vs.* Dimakuchi Tea Estate, 1958, 1 L.L.J. 500.

The person regarding whom the dispute is raised must be one in whose employment, non-employment, terms of employment or conditions of labour (as the case may be), the parties to the dispute have a direct or substantial interest—whether or not such person falls within the definition of 'workman' for the time being.

"If 'any person' were to be read as an expression without any limitation and qualification whatsoever, it would be open to the workmen not only to raise a dispute with regard to the terms of employment of persons employed in the same industry as themselves, not only to raise a dispute with regard to the terms of employment in corresponding or similar industries, not only a dispute with regard to the terms of employment of people employed in our country, but the terms of employment of any workman or any labour anywhere in the world." This proposition, the Bombay High Court observed,[15] had only to be stated in order to make one realize how utterly untenable it was. The High Court held that the expression 'any person' meant one in whom the workmen themselves were directly and substantially interested. It was this decision that was subsequently confirmed by the Supreme Court in the Assam Cha Karmachari Sangha case.

Approving this reasoning, the Supreme Court has held in the case of the Dimakuchi Tea Estate[16] that an industrial dispute can be raised about persons who are not strictly workmen of the employer as defined in the Act provided the workmen who have raised the dispute have direct and substantial interest in the dispute.

By virtue of these interpretations, it used to be held before the amendments of 1956 that workmen could not raise an industrial dispute regarding the dismissal of medical or technical staff. The Amending Act of 1956 has, however, widened the definition of 'workman' so as to include within its scope supervisory and technical employees, so that now unions of workers can raise a dispute about the dismissal of employees belonging to these categories who are also workmen. Notwithstanding the change in the definition of 'workmen', the meaning of the expression "any person" still holds good.

Disputes Relating to Individuals: The law relating to individual disputes was radically changed by Amendment Act No. 35 of 1965 as mentioned in the last section of this chapter. Under this amendment, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, re-

[15] Narendra Kumar Sen and others *vs.* All India Industrial Disputes (Labour Appellate Tribunal), 1953 I L.L.J. 6.

[16] Workmen of Dimakuchi Tea Estate *vs.* Dimakuchi Tea Estate, 1958 I L.L.J. 500.

trenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute. In regard to discharges, dismissals, etc., this amending Act has, with one stroke of the pen, cut through the voluminous case-law on the subject of individual disputes and obliterated all differences between individual disputes and industrial disputes. What is stated in this section, therefore, summarizes the law as it was before this recent amendment came into force on 1 December 1965. It would still have some relevance in respect of disputes other than those pertaining to discharges, dismissals, etc.

A dispute between an individual workman and his employer is not an industrial dispute unless it is taken up by a union of employees or by a considerable section of employees. A decision of the Andhra High Court[17] explained the position clearly in the following words:

"The intention of the legislature in enacting this Act was the resolving of conflicts between the capital and labour and to improve the relations between these two elements so that the production of material wealth of the country might not be hampered and not to redress the grievance of individual workers. It is true that a dispute in its origin might relate to a particular workman but it might develop into a collective dispute and it might govern the terms and conditions of services of a number of workmen employed in any industry."

The Allahabad High Court held in a case under the U.P. Industrial Disputes Act, 1947, where the definition of the term 'industrial dispute' had been borrowed from the Central Industrial Disputes Act, 1947, that an industrial dispute could come into existence even if the parties to the dispute were a single employer and a single workman.[18] This view was rejected by the Supreme Court,[19] which observed as follows:

"The Act is based on the necessity of achieving collective amity between labour and capital by means of conciliation, mediation and adjudication. The object of the Act is the prevention of industrial strife, strikes and lock-outs and the promotion of industrial peace and not to take the place of the ordinary tribunal of the land for the enforcement of contracts between an employer and an individual workman. Thus viewed the provisions of the Act lead to the conclusion that its applicability to an individual dispute as opposed to a dispute involving a group of workmen is excluded unless it acquires the general characteristic of an industrial dispute, namely, the workmen as a body or a considerable section of them

[17] Jagannadham *vs.* State of Andhra Pradesh and others, 1958 I L.L.J. 202, 204.
[18] Newspapers Ltd. *vs.* State Industrial Tribunal, 1954 II L.L.J. 263.
[19] 1957 II L.L.J. 1.

make common cause with the individual workman." In another case,[20] the Supreme Court observed that decided cases in India disclosed three views as to the meaning of the expression 'industrial dispute':

(*i*) a dispute between an employer and a single workman cannot be an industrial dispute,
(*ii*) it can be an industrial dispute, and
(*iii*) it cannot *per se* be an industrial dispute, but may become one if taken up by a trade union or a number of workmen.

The preponderance of judicial opinion is clearly in favour of the last of the three views stated above and there is considerable reason behind it. "Notwithstanding that the language of section 2(k) is wide enough to cover a dispute between an employer and a single employee, the scheme of the Industrial Disputes Act does appear to contemplate that the machinery provided therein should be set in motion to settle only disputes which involve the rights of workmen as a class and that a dispute touching the individual rights of a workman was not intended to be a subject of adjudication under the Act when the same had not been taken up by the union or a number of workmen."

Thus it is now settled law that a dispute relating to an individual workman can become an industrial dispute only if it is taken up by a trade union of employees of which the individual is a member or by a substantial body of workmen. The Industrial Disputes Act is not otherwise meant to settle disputes concerning individuals.

When a dispute relating to an individual employee is not taken up by his co-workers but is sponsored by a wholly unconnected union, it does not cease to be an individual dispute. Thus where two employees out of 15 working in a bus transport company were dismissed and their case was taken up by a union of which none of the remaining 13 workers was a member, it was held[21] that the dispute could not be deemed to be an industrial dispute in the absence of any evidence to show that the workmen other than the dismissed employees espoused their cause and made it a collective dispute.

Where an industrial dispute has been referred to a tribunal for adjudication, the onus of proof would lie upon the party who denies the existence of the industrial dispute or any apprehension of such a dispute.[22] It is presumed that the entire machinery of Government applies its mind to the problem and concludes that there exists an industrial dispute between the parties. Similarly when a union has taken up the case of an individual workman,

[20] Central Provinces Transport Services Ltd. *vs.* Raghunath Gopal Patwardhan, 1957 I L.L.J. 27.

[21] Janatha Bus Transport *vs.* Its workers, 1956 I L.L.J. 470.

[22] Hospet Estate, Chickmagalur *vs.* Its workers, 1959 I L.L.J. 95

there is a presumption that it has done so with the support of the other workmen who are members of it. It is not necessary that there should be any positive overt act, such as the passing of a resolution, by the workmen to evidence their support thereby.

Certain Matters that Can Give Rise to Industrial Disputes: The question whether an employer could or could not close down a business permanently or temporarily falls outside the purview of the Industrial Disputes Act.[23] The definition of "industrial dispute" and the Act taken as a whole assume the continued existence of the industry. Closure even temporarily is different from lock-out. While an industrial tribunal has got the jurisdiction to adjudicate on the question whether a particular lock-out was justified or not, it cannot decide the question whether an employer can close down his business temporarily or permanently. The closure must, however, be real and *bona fide*. If there is no real closure, but only a mere pretence of it, there is no closure in the eye of law, and the workmen can raise an industrial dispute.

Clause (s) of section 2 of the Act says that for the purposes of any proceeding under the Act in relation to an industrial dispute, 'workman' includes any person who has been dismissed, discharged, etc. The word 'discharge' means discharge of a person in a running or continuing business. It does not refer to the discharge of all workmen when the industry itself ceases to exist on a *bona fide* closure of business.[24]

Workmen are at liberty to raise an industrial dispute demanding abolition of the contract system indulged in by their employer for getting part of his work done.[25] Even though the workmen employed by the contractor are not workmen of the parent company, the workmen of the company who have raised the industrial dispute are interested in raising the dispute about the abolition of the contract system. They have a direct and substantial interest in the dispute and in the prevention of unfair labour practices affecting labour as a whole.

Reinstatement of dismissed or discharged workers is one of the matters most frequently referred for adjudication. The failure to employ and the refusal to employ are actions on the part of the employer which would be covered by the term "employment or non-employment."[26] Any dispute connected with employment or non-employment would ordinarily cover all matters that require settlement between workmen and employers, whether those matters concern the causes of their being out of service or any other question and it would also include within its scope the reliefs necessary for

[23] Indian Metal and Metallurgical Corporation *vs.* Industrial Tribunal, Madras, A.I.R. 1953 Mad. 98.

[24] Banaras Ice Factory Ltd. *vs.* Its workmen, A.I.R. 1957 S.C. 168, 172.

[25] Parshuram Pottery Works, Dharangadhra *vs.* Its Workmen, 1958 II L.L.J. 523.

[26] Western India Automobile Association *vs.* The Industrial Tribunal, Bombay A.I.R. 1949 F.C. 111.

bringing about harmonious relations between the employers and workers.

The fact that the employee was dismissed before the dispute in respect thereof arose does not in itself make the dispute not an industrial dispute. Such an employee is a "workman" within the meaning of the definition in section 2(s) of the Act and the dispute is an industrial dispute.[27]

An industrial dispute can be raised on the adequacy of wages even after minimum wages have been fixed under the Minimum Wages Act, 1948.[28] In the fixation of minimum wages the capacity of the employer does not enter into the calculation. The rate fixed is the 'minimum.' If workmen are not satisfied with the minimum wages and demand more, which the employer is unwilling to concede, an industrial dispute arises.

A demand for the alteration of the standing orders of a company with a view to providing that medical relief will be made available by the company to the aged parents of workmen would be an industrial dispute.[29] The expression "industrial dispute" means any dispute or difference between employers and workmen, and a dispute over medical relief for parents would be such a one.

Where an employer claims that he is entitled to damages against loss caused to him by his workmen by indulging in an illegal strike, the dispute is an industrial dispute because it refers to a strike by the workmen.[30] After going through the evidence it would be open to the industrial tribunal to hold that there is a term of employment express or implied which prohibits the workmen from going on an illegal strike. Consequently the dispute as to whether the employer has suffered any loss due to sudden strike of the workmen and if so, to what extent and in what manner the workmen are liable to compensate the employer must be held to be an industrial dispute.

The non-employment of persons who were promised employment but were not appointed cannot be raised as an industrial dispute.[31] Before an industrial dispute can be raised about certain persons, the relationship of employer and workmen should be established between them and the employer. A mere contract to employ could not bring about the relationship of employer and employee, and until the contract is performed and the person is actually employed, the relationship of employer and "workman" is not constituted.

A demand by workmen to have equal representation on the board of

[27] The Management of Hindustan Times, Ltd., *vs.* The Chief Commissioner, Delhi. 1957 II L.L.J. 466.

[28] South India Estate Labour Relations Organization *vs.* State of Madras and others, 1954 I L.L.J. 8.

[29] Bangalore Woollen Cotton and Silk Mills. Co. *vs.* State of Mysore, 1958 II L.L.J. 613.

[30] Lord Krishna Sugar Mills Workers' Union, Saharanpur *vs.* State Industrial Tribunal, 1957 I L.L.J. 618.

[31] Workers of Sagar Talkies *vs.* Odeon Cinema, Madras, 1957 I L.L.J. 639.

trustees of a provident fund cannot amount to an industrial dispute.[32] The board of trustees is a statutory machinery for administration and execution of the provident fund as a trust fund and could not be considered to be in any way connected even remotely with the employment, non-employment or the terms of employment or with the conditions of service of a workman.

Where a purchaser-company failed to continue pensions granted by the seller-company, it was held that a claim for recovery of arrears of pension or for directions to continue the pensions granted by the predecessor in interest could not be deemed to be an industrial dispute.[33] A company purchasing a business as a going concern with the liability to pay the pensions could not be considered to be the "employer" qua the pensioners, though the purchaser company as a successor might have the liability to pay pension having purchased the business as a going concern, succeeding to the assets and liabilities, but from this it could not be said that in relation to the employees who have retired before the purchase it has become the employer of those persons. Hence there could be no reference of the dispute to adjudication.

Workmen can raise a dispute about the maintenance by employers of schools, dispensaries, crèches for children of workmen, etc.[34] Such disputes are industrial disputes, because by raising such disputes workmen are in a sense demanding better conditions of labour.

Disputes relating to the payment of bonus, gratuity, pension, provident fund, etc., are industrial disputes.[35] These are given not out of charity but to make labour more contented. They form part of the remuneration of the workers for their services.

Division of Jurisdiction between the Central and State Governments: The "appropriate Government" for an industry has the responsibility for dealing with industrial relations in that industry. The Central Government is the appropriate Government in relation to an industrial dispute concerning any industry carried on by or under the authority of the Central Government or by a railway company or concerning any such controlled industry as may be specified by the Central Government or in relation to an industrial dispute concerning a banking or an insurance company, a mine, an oilfield, or a major port. In relation to all other industrial disputes, the State Government is the appropriate Government.

Where an aerated water manufacturer had entered into a contract with the Central Government by which he acquired the right to sell his aerated waters

[32] Muzaffarpore Electric Supply Workers' Union *vs.* Muzaffarpore Electric Supply Company Ltd., 1957 II L.L.J. 542.

[33] Newman (W) & Co. Ltd. *vs.* Bijay Ballav Sett, 1957 II L.L.J. 389.

[34] Maharana Mills Ltd., Porbandar *vs.* Its Workmen, 1955 I L.L.J. 266.

[35] Bhakthavatsalu *vs.* Chrome Leather Co., 1949 L.L.J. 1.

on the stations of a certain railway at fixed prices and under controlled conditions, it was held that the manufacturer was not carrying on any industry "by or under the authority of the Central Government."[36] An industry carried on by or under the authority of the Central Government means, in effect, an industry owned by the Central Government which is being carried on by the Government either through a department or by some authority created by Government to carry on that industry. No business owned and carried on by a private person or a limited company can be a business carried on by or under the authority of Government. Where any Government enters into a contract with a private manufacturer under an arrangement involving some measure of control, the State Government is still the appropriate Government. Where an activity is carried on by a limited liability company, the mere fact that the Central Government owns the majority of shares in the company is not sufficient to bring industrial relations in that unit within the sphere of the Central Government. This is the case with the large majority of industrial units started in recent years by the Central Government.

It is not every controlled industry coming within the purview of the Industries (Development and Regulation) Act that falls within the jurisdiction of the Central Government for the purpose of industrial relations. Such an industry must be specifically brought under the purview of the Central Government in regard to industrial relations before the Central Government can become the appropriate Government.[37]

The constitutionality of section 2(a) of the Industrial Disputes Act defining the expression "appropriate Government" has come in for judicial decision.[38] Section 2(a) of the Act allows the Central Government option to treat the settlement of disputes in some industries as its exclusive concern. Such an arrangement is found in several enactments "as the legislature cannot ascertain or anticipate the conditions and circumstances pertaining to the numerous industries in the country with the facility and advantage the Government has." If, as a result of the specification the reference in some cases is to be made by the Central Government and in others by the State Government, it cannot be said that there is differentiation in a matter of substance or that the principle of equality under Article 14 of the Constitution is contravened. Section 2(a) of the Act is, therefore, not unconstitutional.

Definition of "Workman" : An important definition which controls the type of cases dealt with under the Act is that of "workman", for an industrial dispute is one that arises, *inter alia*, between employers and workmen. The

[36] Carlsbad Mineral Water Manufacturing Co. Ltd. *vs.* P. K. Sarkar, 1952 I L.L.J. 488.

[37] Bijay Cotton Mills Ltd. *vs.* Their employees, 1957 I L.L.J. 311.

[38] Firebricks and Potteries Ltd. *vs.* Firebricks and Potteries Ltd. Workers' Union, 1956 I L.L.J. 571.

present definition of the expression, as settled by the amending Act of 1956, says that "workman" means any person (including an apprentice) employed in any industry to do any skilled or unskilled manual, supervisory, technical or clerical work for hire or reward, whether the terms of employment be expressed or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute. Certain categories of employees have been excluded from the definition, viz., members of the Defence Services and of the Police and the prison staff, those employed mainly in a managerial or administrative capacity, and those who, being employed in a supervisory capacity, draw wages exceeding Rs. 500 per month or exercise functions mainly of a managerial nature.

Before the amending Act of 1956, the expression "workman" meant any person employed to do any skilled or unskilled manual or clerical work. Thus supervisory and technical employees were added to the definition by the amendment. While persons employed in a supervisory capacity drawing wages exceeding Rs. 500 per month are excluded from the definition, this limit of wages does not apply to technical employees who are not employed mainly in a managerial or administrative capacity. Under the 1947 Act, a workman discharged during an industrial dispute was included in the definition of "workman", but the 1956 amendment includes in the definition several other categories of employees whose services have been terminated. A dispute can now be raised in respect of any dismissal, discharge or retrenchment, irrespective of when it took place in relation to any other industrial dispute. This has facilitated the seeking of relief by employees who have been dismissed, discharged or retrenched.

An important part of the definition is that which says that a workman is one employed to do any work for hire or reward. There should be the relationship of master and servant or of employer and employee between the individual and the employer. The proper test of whether such a relationship exists or not is to see whether the employer has authority to control the manner of execution of the work by the employee.[39] Whether or not this is the sole test, this test should be satisfied before it could be said that there is a relationship of master and servant between the parties. The fact that the payment of labour was on piece-work basis or that the workmen took the assistance of other persons was not inconsistent with the existence of such relationship.

The Supreme Court has held that in deciding whether a relationship of employer and employee exists, what has to be seen is whether there was due

[39] Maharaja Beedi Factory, Ranipet *vs.* Secretary, North Arcot District Beedi Workers' Union, 1958 I L.L.J. 159.

control and supervision of the employer. The greater the amount of direct control exercised over the person rendering the service by the person contracting for it, the stronger the grounds for holding it to be a contract of service. The fact that persons so engaged are paid on piece-rate basis and that they could employ their own labour and pay for it could not be considered decisive factors to hold them as independent contractors[40] when the employer has power of supervision and control at all stages of the work.

When an employer gets some work done through a contractor, the labour employed by the contractor are not workmen of the principal employer, because no relationship of master and servant is created between them. No industrial dispute can, therefore, be raised between the workers of the contractor and the principal employer. The definition of the term 'worker' in the Factories Act, which would include a person employed "through any agency" and hence contract labour working on the premises of the factory, is irrelevant for the purpose of the Industrial Disputes Act. This does not mean that the contractor's labour cannot raise a dispute against the contractor himself.

In some cases the relationship may not be so clear-cut as that between a master and servant or between a principal and a contractor. Jewellers often require goldsmiths to attend and work on their premises on piece-rate basis, but so long as the goldsmiths complete the allotted work, they are entitled to attend to the work of other customers. It was held that such employees were only contractors and not workmen within the meaning of the Industrial Disputes Act.[41] Similarly in the beedi industry, where it is usual to hand over leaves and tobacco to agents for getting them rolled by distribution to workers working in their homes, the relationship of employer and workman does not exist between the principal employer and the agents.

As persons employed mainly in a managerial or administrative capacity or in a supervisory capacity drawing wages exceeding five hundred rupees per mensem have been excluded from the definition of 'workman', questions constantly arise whether a particular employee belongs to any one of these categories. This is mainly a question of fact, and as it does not involve any point of principle, it need not detain us long. The expressions 'supervisory', 'managerial', and 'administrative' have not been defined and must, therefore, be understood to have their normal dictionary meaning. A supervisor is one who supervises the work of others, whether the latter be unskilled labour, clerks, technical workers or anybody else. Persons employed in a managerial capacity must necessarily exercise functions associated with the management as distinct from mere administration or execution of settled policies and programmes. The expression 'administrative capacity' is less precise than the other two expressions.

[40] Dharangadhra Chemical Works Case 1957. I L.L.J. 477.

[41] R. M. Appavu Chettiar & Sons *vs.* Its workmen, 1958 I L.L.J. 645.

A covenanted officer having terms and conditions of service distinct from those of clerks and doing some supervisory work is not a workman. An employee who is in charge of a department, has powers to review the conduct of persons working under him, and can grant leave and do other similar things is employed mainly in a managerial capacity and is not a workman even if his salary is less than five hundred rupees per mensem.[42] An aircraft maintenance engineer drawing more than five hundred rupees per mensem, whose job it is to inspect aircraft and aero engines before flight and to inspect and check the work done by skilled mechanics, is a supervisor and not a workman. The manual work which he does in the course of inspection is incidental to his work of supervision and does not convert him into a workman. Similarly a shift engineer with powers of supervision over workmen does not himself become a workman because of his having to fill certain forms at the end of the shift.[43] The pilot of an aircraft is a 'workman' while the captain of a ship would not be. A pilot has himself to fly his aircraft and to perform a highly-skilled technical work. As such he is a workman irrespective of his salary. The captain of a ship, on the other hand, has a large number of officers and staff working under his direction and supervision and has to command and supervise the proper escort of a large number of passengers and a large quantity of cargo. He exercises functions which are essentially managerial and supervisory and is, therefore, not a workman.

Persons employed purely in technical work, irrespective of their salary, are workmen. It is surprising that this should be so, because such highly-talented technical people can often dictate their terms and do not really stand in need of legal assistance and protection. The word 'technical' has not been defined and must, therefore, be interpreted according to its dictionary meaning. Musicians are technical employees and hence workmen as they possess the "technique" of music. Similarly chemists are technical persons. Draftsmen do partly clerical work and partly technical work and are workmen.

Works Committees: The preamble to the Act says that the Act makes provision for the investigation and settlement of industrial disputes and "for certain other purposes hereinafter appearing." These other purposes include the prevention of disputes. The setting up of works committees has been designed with this object in view. The Royal Commission on Labour observed that "the attempt to deal with unrest must begin rather with the creation of an atmosphere unfavourable to disputes than with machinery for settlement." As one of the ways of creating such an atmosphere the Royal Commission suggested the setting up of works committees, and in regard to their working, observed as follows:

[42] Francis *vs.* Barakar Engineering and Foundry Works, Ltd., 1958 I L.L.J. 608.
[43] East Asiatic Company (India) Ltd. *vs.* J. E. Morris, 1955 I L.L.J. 418.

"We believe that if they are given proper encouragement and past errors are avoided, works committees can play a useful part in the Indian industrial system . . . . Public attention in India has naturally been concentrated on securing external machinery for settling disputes, that is, some authority either entirely or partly independent of the industry concerned. Such authorities can be of great value at times, but they cannot take the place of machinery established within an industry to deal with disputes as they arise. The external tribunal can seldom be involved except at a comparatively late stage of a dispute, that is, when a strike has broken out or is imminent. By this time, the dispute has generally attained its greatest dimensions, the parties have taken up positions from which it is difficult to recede, the spirit of compromise has disappeared and an element of bitterness and exasperation has arisen which makes settlement difficult. Further the external tribunal has to acquire its knowledge of conditions and at best this must be partial; those within the industry start with a better appreciation of the basic facts than any external authority can acquire."[44]

The works committee is charged with the duty "to promote measures for securing and preserving amity and good relations between the employer and workmen and to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters" (sub-section (2) of section 3). In the case of industrial establishments in which 100 or more workmen are employed or have been employed on any day in the preceding 12 months, the appropriate Government may, by general or special order, require the employer to constitute in the prescribed manner a works committee consisting of representatives of employers and workmen engaged in the establishment. The number of representatives of the workmen on the committee should not be less than the number of representatives of the employer. According to the Industrial Disputes (Central) Rules 1957, in an establishment where any workmen are members of a registered trade union, the workmen's representatives on the committee are to be elected in two groups, viz.,

(*i*) those to be elected by the workmen of the establishment who are members of the registered trade union or unions, and
(*ii*) those to be elected by the workmen of the establishment who are not members of the registered trade union or unions

in the same proportion to each other as the union members in the establishment bear to non-members. The workmen entitled to vote are divided into

[44] *Report of the Royal Commission on Labour*, 339-40.

two electoral constituencies, viz., those who are members of registered trade unions and those who are not.

Works committees have not been an unqualified success. Enquiries into the working of works committees set up within the jurisdiction of the Central Government show that only 60 per cent of the total number of works committees which are required to be set up under the law are in fact actually working. Of those that are working, not all have produced substantial results. Broadly speaking, it may be said that only 25 per cent of the total number of works committees that have to be set up under the law are fulfilling the objects expected of them.

Notice of Change: The provisions regarding notice of change contained in section 9A of the Act were introduced by the amending Act of 1956. It had long been felt that sudden changes in the conditions of service of workmen without any notice to, or discussion with, the workmen had been responsible for many cases of industrial strife. As a measure of avoiding industrial disputes, legislation was brought in for the giving of notices of change in respect of the matters prescribed in the Fourth Schedule to the Act. Employers are prevented from making any change without giving notice or within 21 days of the giving of notice. The Fourth Schedule which lists the matters in respect of which notice of change should be given includes such conditions of service as wages, allowances, hours of work and rest intervals, leave with wages and holidays, rationalization likely to lead to retrenchment, increase or reduction in the number of employees, etc. The requirement of previous notice does not apply where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules and various other Government Service rules apply. The reason for making this exception is that such rules have to apply uniformly to all Government servants and that as they are framed after a great deal of deliberation, there would be neither necessity for, nor possibility of, giving notice.

Conciliation through Conciliation Officers: A very early step in dealing with apprehended industrial disputes is conciliation through conciliation officers. Conciliation officers are appointed by the appropriate Government and are charged with the duty of mediating in and promoting the settlement of industrial disputes. They may be appointed for specified areas or for specified industries, the former being more common in order to avoid wasteful touring in the same area by a number of officers. Where a dispute relates to a whole industry under the jurisdiction of the appropriate Government, a senior officer of the conciliation machinery at headquarters is generally entrusted with the work of conciliation. Though conciliation officers have certain statutory powers for entering the premises of establishments and for calling for and inspecting documents, they are expected generally to function through suggestion and persuasion rather than compulsion and fault-finding. When a conci-

liation officer comes to know of a dispute or difference, he is expected to hold conciliation proceedings in the prescribed manner (sub-section (1) of section 12). Where the dispute relates to a public utility service and the prescribed notice of strike has been given, it is obligatory on the conciliation officer to hold conciliation. In undertaking conciliation, the conciliation officer has "to investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as he thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute." The object is to bring about an amicable settlement of the dispute and the manner of doing so is largely left to him. The mutual benefits that flow from a settlement are far more important than the sheer justice of the case, and the conciliation officer who persuades the parties to think in terms of adjustment for the sake of mutual benefit rather than of success on the merits of each party's case plays his role properly.

The Calcutta High Court observed in a case[45] that the duties of a conciliation officer were not judicial but administrative. "If it was to be held that the duties of a conciliation officer were judicial, then in connection with everything that he does, the formalities of judicial trial will have to be observed, e.g., he could not ascertain from one side its views except upon notice to, or in the presence of, the other parties. It is but patent that no conciliation proceedings could be carried on under such conditions. The main task of the conciliation officer is to go from one camp to the other and find out the greatest common measure of agreement. That being so, the grievance that the investigations have not been carried on in the manner that a judicial proceeding should be carried on is without substance. So also the rules of natural justice would not apply if the proceedings are purely administrative."

Conciliation through conciliation officers is expected to be completed in 14 days though this period may be extended by agreement between the parties. If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer sends a report accordingly to the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute. If no such settlement is arrived at, the conciliation officer sends a full report to the appropriate Government setting forth the steps taken by him for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof together with a full statement of such facts and circumstances and the reasons on account of which a settlement could not be arrived at.

Reference of Disputes to Boards, Courts or Tribunals: Section 10 of the Industrial Disputes Act, which deals with the reference of disputes to boards of conciliation, courts of inquiry, labour courts or tribunals, was amended

[45] Royal Calcutta Golf Club Mazdoor Union *vs.* State of West Bengal, 1957 I L.L.J. 218.

slightly in 1952 and extensively in 1956. As the section now stands, where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may refer the dispute to a board of conciliation for promoting a settlement thereof, or refer any matter appearing to be connected with, or relevant to, the dispute to a court for inquiry, or refer the dispute or any matter appearing to be connected with, or relevant to, the dispute to a labour court or tribunal for adjudication. Where the dispute relates to a public utility service and a notice of strike or lock-out has been given, the appropriate Government is required to make a reference unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient to make a reference.

Before the promulgation of an Ordinance on 6 December 1951, later on replaced by the Amendment Act of 1952 (Act XVIII of 1952), the opening portion of section 10 read : "If any industrial dispute exists or is apprehended, etc." The courts used to hold[46] that it was the duty of the appropriate Government to satisfy itself that an industrial dispute existed or was apprehended and that courts could go into the validity of the reference and examine whether there were sufficient materials for a reference and whether the Government had applied its mind to the subject matter of the reference. As it was not always possible to adduce evidence to show that Government had applied its mind, the law had to be amended. Now it is the opinion of the appropriate Government regarding the existence or apprehension of an industrial dispute that is relevant. For a reference to be made, all that is required is that there should be an industrial dispute, and about the existence of the industrial dispute, the Government is the sole judge.[47] While the opinion of the appropriate Government as to the existence of an industrial dispute will be accepted by courts, the question whether the dispute that has arisen is an industrial dispute is an objective fact and Government cannot turn a dispute which is not an industrial dispute into an industrial dispute merely by making an order of reference.[48] Courts can go into the question whether the disputes referred are industrial disputes or not.

The measure of the Government's responsibility in making a reference under section 10 was brought out in an important case.[49] The Supreme Court said :

> "This is, however, not to say that the Government will be justified in making a reference under section 10(1) without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended in relation to an establishment or a definite group of

[46] Kandan Textiles Limited *vs.* Industrial Tribunal, Madras, 1949 I L.L.J. 875.

[47] Hotel Imperial, New Delhi *vs.* Chief Commissioner, Delhi and others, 1958 I L.L.J. 92.

[48] Bengal Club Limited *vs.* S. R. Samaddar and others 1957 12 F.J.R. 309.

[49] State of Madras *vs.* C. P. Sarathy, 1953 I L.L.J. 174.

establishments engaged in a particular industry. It is also desirable that the Government should, wherever possible, indicate the nature of the dispute in the order of reference. But it must be remembered that in making a reference under section 10(1), the Government is doing an administrative act . . . . The Court cannot, therefore, canvass the order of reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial determination . . . . But if the dispute was an industrial dispute as defined in the Act, its factual existence and the expediency of making a reference in the circumstances of a particular case are matters entirely for the Government to decide upon, and it will not be competent for the Court to hold the reference bad and quash the proceedings for want of jurisdiction merely because there was, in its opinion, no material before the Government on which it could have come to an affirmative conclusion on those matters."

Before the Ordinance of 1951 and the Amending Act of 1952, the appropriate Government could refer only the dispute and nothing else to a tribunal for adjudication. The definition of the term "award", however, referred to "determination of an industrial dispute or of any question relating thereto." Thus while only the dispute could be referred for adjudication, the award could deal with any question relating to the industrial dispute. Governments could not, however, refer "matter connected with or relevant to the dispute" for adjudication; nor could a tribunal adjudicate on such matters. This restriction cramped references, and there arose a tendency on the part of parties to challenge the terms of reference. Hence the section was amended to read that Government could refer the dispute or any matter "appearing" to be connected with or relevant to the dispute for adjudication. This has given a free hand to the appropriate Government to express the dispute and connected matters in an appropriate manner.

It is for the appropriate Government to decide whether the reference should be made to a board of conciliation, court of inquiry, labour court or industrial tribunal. A court of inquiry merely ascertains facts, but by highlighting all relevant points it may assist in the settlement of a dispute by conciliation and agreement. Further with the introduction of compulsory arbitration very few cases have been sent to courts of inquiry, for a tribunal can both enquire into facts and give decisions on issues. Courts of inquiry are particularly valuable when there are no statutory means of settling disputes and the weight of public opinion has to be brought to bear on the parties for a reasonable settlement of the dispute through their own efforts.

Where a dispute relates to a public utility service and a notice of strike or lock-out has been served, it is obligatory on the part of the appropriate Government to refer the dispute to one of the various authorities unless it considers that the notice has been frivolously or vexatiously given or that it would be inexpedient to make a reference. When the appropriate Govern-

ment comes to the conclusion that it is inexpedient to make a reference, it must naturally give reasons which would indicate that it has applied its mind to the problem. "These are not objective facts which can be determined by a court of law and the court is, therefore, bound by the opinion formed by the Government on these matters if it is not vitiated by extraneous considerations."[50] Where the dispute relates to an industry which is not a public utility service, it is in the discretion of Government to make a reference. The word "may" used in the section confers a general power on Government to make a reference, but there is also a duty cast on the Government "not to ignore but to adopt the possibilities of settlement through conciliation officers and boards and then decide as to the course to be adopted as to whether a reference should be made to a tribunal for adjudication and if the Government are satisfied that there is no case for reference, they should record the reasons for not making the reference and intimate to the parties about the same."[51]

There cannot be a reference in respect of an industry which is not yet in existence. A tribunal cannot decide the question whether an employer can close down his business, although it can go into the question whether closure is *bona fide* and not with a view to victimizing the workmen. A reference is not necessarily bad because at the time when it is made the industry is no longer in existence. Industrial disputes relating to matters pertaining to the period when the industry was still running can be referred to a tribunal after its closure.

In the original Act of 1947, there was provision for the adjudication of disputes only through industrial tribunals. The Labour Appellate Tribunal came into existence later on and was abolished by the 1956 Amendment Act. With the abolition of the Appellate Tribunal, apprehensions were entertained whether there would be any machinery in future for the coordination of the activities of tribunals and for ensuring uniformity of decisions in their application to the various States. In particular, disputes affecting more than one State had to be handled in a coordinated manner so that employers with establishments in several States would be enabled to apply the same terms and conditions of service to their employees in the various States. It was for that purpose that reference of important industrial disputes to national tribunals was visualized. According to the 1956 Amendment Act, when the Central Government is of opinion that any industrial dispute exists or is apprehended and that the dispute involves any question of national importance or is of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such dispute, it can refer the dispute to a national tribunal whether or not it is the appropriate Government in relation to that dispute.

[50] Ramachandra Abaji *vs*. State of Bombay, A.I.R. 1952 Bombay 293.

[51] Free Press Labour Union *vs*. State of Madras, A.I.R. 1952 Madras 74.

Under the 1947 Act, it was sometimes difficult to order adjudication in respect of all the units of an industry, for if an individual establishment came forward and proved that it had no dispute with its employees, its inclusion in the adjudication would have been vitiated. In order to get over this difficulty, a provision has been made in the 1956 Amendment Act to the effect that where a dispute concerning any establishment or establishments has been referred to a labour court, tribunal or national tribunal and the appropriate Government is of opinion that the dispute is of such a nature that any other establishment, group or class of establishments of a similar nature is likely to be interested in, or affected by, such dispute, the appropriate Government may include in that reference such establishment, group or class of establishments "whether or not at the time of such inclusion any dispute exists or is apprehended in that establishment, group or class of establishments."

Extraordinary Jurisdictions of Higher Courts: We cannot here enter into a detailed elaboration of the principles underlying the exercise of extraordinary jurisdictions, through the issue of writs, by the High Courts and the Supreme Court under Articles 32, 226 and 227 of the Constitution or, through appeals by special leave, by the Supreme Court under Article 136 of the Constitution. Briefly put, a High Court can annul the decision of a tribunal by a writ of certiorari under Article 226, but under Article 227 it can in addition issue further directions in the matter. A writ of certiorari under Article 226 annulling an award or decision can issue when a tribunal (*i*) acts without jurisdiction, or (*ii*) acts in excess of jurisdiction, or (*iii*) refuses to exercise a jurisdiction vested in it, or (*iv*) acts in violation of the principles of natural justice, or (*v*) acts in such a way that there comes into existence an error apparent on the face of the record. In issuing a writ, the High Court will not review findings of facts reached by the tribunal. Writs of certiorari are issued to quash a decision already arrived at, but writs of prohibition are issued to forbid a tribunal from continuing pending proceedings. While a decision may thus be quashed, the superior court may not substitute its own decision for that of the tribunal. This is so because the superior court is deemed to be acting in a supervisory and not in an appellate capacity. Similarly appeals by special leave in the Supreme Court are quite different from appeals in regular appellate courts. The Supreme Court will ordinarily treat decisions on questions of fact of the lower court or tribunal as final. It will interfere only (*i*) where a tribunal acts in excess of jurisdiction or fails to exercise a patent jurisdiction, (*ii*) where there is an apparent error on the face of the decision, and (*iii*) where a tribunal has erroneously applied well-accepted principles of jurisprudence or violated the principles of natural justice.

Writ proceedings under Articles 226 and 227 of the Constitution should not be equated to an appeal to the Supreme Court under Article 136. Unless

there is any grave miscarriage of justice or flagrant violation of law calling for interference, it is not for High Courts under Articles 226 and 227 of the Constitution to interfere.[52]

The extent of interference by High Courts was clarified by the Andhra Pradesh High Court in a recent case[53] as follows:

> "This being an application under Article 226 of the Constitution, the jurisdiction of the High Court is very much limited. Not all matters which could be canvassed before an appellate court could be urged before this court in these proceedings. The essential grounds on which the order of a quasi-judicial tribunal could be sought to be quashed are:
>
> (1) on the ground of there being an error on the face of the record;
> (2) the order being manifestly against the principles of natural justice.
>
> In order that an error of law might form a ground for interference by the High Court, such error must be manifest on the record. But with regard to errors of fact, it may now be taken to be settled by the course of decisions and finally settled by the judgment of the Supreme Court in *Nagendranath* vs. *Commissioner of Hills Division* (1958 S.C. 398) that it cannot form a ground for interference."

Whether on the facts of a particular case the dismissal of an employee was wrongful or justified is a question primarily for the tribunal to decide. Unless there is any grave miscarriage of justice or flagrant violation of law calling for intervention, it is not for the High Court under Articles 226 and 227 of the Constitution to interfere.[54]

The Bombay High Court expressed[55] somewhat similar views in the following terms:

> "The High Court has power to issue a certiorari against a tribunal to correct an error apparent on the face of the record. But the error must be so blatant, so obvious, so manifest, or so palpable that when attention is invited to it, no elaborate argument is needed to support the contention that the conclusion is erroneous. Where, however, by elaborate argument and detailed reference to evidence a particular conclusion may be demonstrated to be erroneous, the conclusion cannot be regarded as disclosing an error apparent on the face of the record."

"An error apparent on the face of the proceedings" has been the subject

[52] Workmen of Messrs. Lipton, Ltd. *vs.* Messrs. Lipton, Ltd., 1958 II L.L.J. 602.
[53] Hendricks & Sons *vs.* I.T. and others, 1959 I L.L.J. 235.
[54] D. N. Banerji *vs.* P. R. Mukherjee, A.I.R. 1953 S.C. 58.
[55] New Gujarat Cotton Mills Ltd. *vs.* Labour Appellate Tribunal, A.I.R. 1957 Bombay 111.

of numerous judicial decisions. One of these has been mentioned in the previous paragraph. Chagla, C.J., said in a case[56] "that no error could be said to be apparent on the face of the record if it was not self-evident, and if it required examination or argument to establish it." But what is self-evident to one judge may not be so to another. So the Supreme Court gave some assistance in regard to this when it observed:[57] "An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record."

It is only an error of law apparent on the face of the record and not an error of fact so apparent that will justify the issue of a writ of certiorari. This was made clear by the Supreme Court[58] in the following terms: "It is clear from an examination of the authorities of this court, as also of the courts in England, that one of the grounds on which the jurisdiction of the High Court on certiorari may be invoked is an error of law on the face of the record and not every error either of law or fact, which can be corrected by a superior court, in exercise of its statutory powers as a court of appeal or revision."

The principles of natural justice, violation of which would justify the issue of a writ of certiorari, are a difficult concept. Viscount Haldane, L.C., observed in a case that natural justice was "an expression sadly lacking in precision." Broadly speaking, the rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.[59]

As an order under section 10(1) of the Industrial Disputes Act is only administrative in its scope, it is outside the purview of correction by the issue of a writ of certiorari.[60] But jurisdictional issues can be raised before the industrial tribunal, and if the tribunal arrives at a wrong decision, the aggrieved person can challenge the decision by an application for the issue of a writ of certiorari.

Courts cannot compel an appropriate Government to make a reference in any particular case. This is so because the making of a reference is subject to two qualifications. First, the Government has to arrive at a subjective opinion whether or not an industrial dispute exists or is apprehended. Secondly, even when it forms such an opinion, the question whether it is

[56] Batuk K. Vyas *vs.* Surat Borough Municipality, A.I.R. 1953 Bom. 133.

[57] Satyanarayan Laxminarayan Hegde and others *vs.* Mallikarjun Bhavanappa Tirumale, A.I.R. 1960 S.C. 137.

[58] Nagendra Nath *vs.* Commissioner of Hills Division, 1958 S.C.R. 1240.

[59] Union of India *vs.* T. R. Varma, 1958 II L.L.J. 259.

[60] Paramount Films of India Ltd. *vs.* State of Madras, 1958 I L.L.J. 62.

expedient to make a reference is left to the Government to decide. Consequently no writ in the nature of mandamus can be issued by courts to the appropriate Government directing it to refer an alleged industrial dispute for adjudication by a tribunal.[61]

Nevertheless, the Supreme Court has held[61a] that the discretion vested in the Government in the matter of deciding whether or not to make a reference cannot be exercised arbitrarily and that if a consideration of all the relevant and germane factors leads it to the conclusion that there is a case for reference of the dispute for adjudication, the Government is bound to make the reference. Therefore in a case in which the Government has refused to make a reference, it is open to the party whose application for reference is rejected to challenge the decision of the Government in a court of law. If the court is satisfied that the reasons given for refusing to make a reference are extraneous and not at all germane, then the court can issue, and would be justified in issuing, a writ of mandamus even though the order is an administrative one. According to the Supreme Court, the object of the Act is to make provision for the investigation and settlement of industrial disputes, and if it appears to the court that in a case falling under section 12(5), the investigation and settlement of any legitimate industrial dispute has been prevented by the Government by refusing to make a reference on grounds which are wholly irrelevant and extraneous, it must be held that a case for the issue of a writ of mandamus is established.

When the management of a match factory decided to close down owing to losses but the Government treated it as a lock-out and made a reference under section 10 of the Act, it was held that as there was no industrial dispute within the meaning of section 2(k) of the Act, the reference by the Government was *ultra vires* and invalid and hit by the Constitution.[62]

In a Madras case it was held that though an order of reference, being an administrative act, could not be quashed by a writ of certiorari, if a quasi-judicial body like an industrial tribunal was vested jurisdiction when it should not have been, it would be open to the High Court to issue a writ of prohibition asking the tribunal to desist from proceeding with the matter.[63] The same view was taken by the Supreme Court in another case.[64]

The question whether a person is a workman within the definition of the Industrial Disputes Act is the whole basis of the jurisdiction of the industrial tribunal. It is open to a High Court to go into the question in certiorari proceedings under Article 226 of the Constitution. Where, however, a tribu-

[61] Royal Calcutta Golf Club Mazdoor Union *vs.* State of Bengal and others, 1957 I L.L.J. 218.

[61a] State of Bombay *vs.* K. P. Krishnan, A.I.R. 1960 S.C. 1223.

[62] The Hamidia Match Manufacturing Co. Ltd., Bhopal *vs.* State of Bhopal, A.I.R. 1954 Bhopal 17.

[63] State of Madras *vs.* K. N. Padmanabha Iyer, 1958 2 M.L.J. 266.

[64] Newspapers Ltd. *vs.* State Industrial Tribunal, U.P., 1957 II L.L.J. 1.

nal had recorded evidence and come to a finding that the persons involved were workmen and not independent contractors, it was held that the finding of fact should not be upset by the High Court.[65]

Appeal by special leave under Article 136 of the Constitution to the Supreme Court cannot be equated to a right of appeal as commonly understood. The circumstances in which the Supreme Court will interfere were stated[66] by that Court as follows:

> "It is now well settled that generally the necessary prerequisites for Supreme Court's interference to set right decisions arrived at by tribunals whose conclusions on questions of fact are final can be classified under the following categories, namely (*i*) where the tribunal acts in excess of the jurisdiction conferred upon it under statute or regulation creating it or where it ostensibly fails to exercise a patent jurisdiction, (*ii*) where there is an apparent error on the face of the decision, and (*iii*) where the tribunal has erroneously applied well accepted principles of jurisprudence. It is only when errors of this nature exist that interference is called for."

Voluntary Reference of Disputes to Arbitration: Provision for voluntary arbitration has been made in the Act by the Amendment Act of 1956. Under the new section 10A, where the employer and the workmen agree to refer a dispute to arbitration, they may, at any time, before the dispute has been referred under section 10 to a labour court, tribunal or national tribunal, by a written agreement, refer the dispute to arbitration. The parties may choose any arbitrator they like or can agree to refer the dispute to the arbitration of a labour court, tribunal or national tribunal. A copy of the arbitration agreement has to be forwarded to the appropriate Government, which is required, within 14 days from the date of receipt of the copy, to publish the same in the official gazette. An arbitration award is included in the definition of the expression "award" and is enforced in the same manner as an award in an adjudication. Reference has been made to a recent amendment of the Act in regard to voluntary arbitration in the last section of this chapter.

Conciliation through Conciliation Boards: The appropriate Government may, in suitable cases, refer an industrial dispute to a board of conciliation for promoting a settlement thereof. Boards of conciliation are to be set up as occasion arises and are not permanent or standing bodies (section 5). A board is to consist of a chairman and two or four other persons. The chairman should be an independent person, that is, one unconnected with the industrial dispute referred to the board or with any industry directly affected by such dispute. The other members are appointed in equal numbers to represent the parties to the dispute and on the recommendation of the party concerned.

[65] D. C. Works, Ltd. *vs.* State of Saurashtra, A.I.R. 1957 S.C. 264.
[66] Clerks of Calcutta Tramway *vs.* Calcutta Tramway Co. Ltd., 1956 II L.L.J. 450.

If, however, a party fails to make a recommendation within a prescribed time, the appropriate Government is required to appoint such persons as it thinks fit to represent that party.

It is the duty of the board to endeavour to bring about a settlement of the dispute and for that purpose to investigate the dispute and all matters affecting the merits and the right settlement thereof and may do all such things as it thinks fit for the purpose of inducing the parties to come to a fair and amicable settlement of the dispute (section 13).

If a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the board has to send a report thereof to the appropriate Government together with a memorandum of settlement signed by the parties to the dispute. If no such settlement is arrived at, the board sends a full report to the appropriate Government setting forth the proceedings and the steps taken by the board for ascertaining the facts and circumstances relating to the dispute and for bringing about a settlement thereof, together with the reasons on account of which, in its opinion, a settlement could not be arrived at. It is then for the appropriate Government to decide whether a reference to a labour court, tribunal or national tribunal should be made. The board is required to submit its report within two months of the date on which the dispute was referred to it. The appropriate Government can extend the time by a further period of two months. The time for submission of the report may also be extended as may be agreed upon in writing by all the parties to the dispute.

While a settlement arrived at by agreement between the employer and his workmen otherwise than in the course of conciliation proceedings is binding only on the parties to the agreement (sub-section (1) of section 18), a settlement arrived at in the course of conciliation proceedings is binding on

(*a*) all parties to the industrial dispute;
(*b*) all other parties summoned to appear in the proceedings as parties to the dispute;
(*c*) where a party referred to in clause (*a*) or (*b*) is an employer, his heirs, successors or assigns in respect of the establishment to which the dispute relates; and
(*d*) where a party referred to in clause (*a*) or (*b*) is composed of workmen, all persons who were employed in the establishment or part of the establishment, as the case may be, to which the dispute relates on the date of the dispute and all persons who subsequently become employed in that establishment or part (sub-section (3) of section 18).

A settlement comes into operation on such date as is agreed upon by the parties to the dispute, and if no date is agreed upon, on the date on which the memorandum of the settlement is signed by the parties to the dispute. Such settlement is binding for such period as is agreed upon by the parties,

and if no such period is agreed upon, for a period of six months from the date on which the memorandum of settlement is signed by the parties to the dispute and shall continue to be binding after the expiry of the period mentioned above until the expiry of two months from the date on which a notice in writing of the intention to terminate the settlement is given by one of the parties to the other (section 19).

Where on the failure of conciliation by a conciliation officer, the appropriate Government does not make a reference to a board, labour court, tribunal or national tribunal, it has to record and communicate to the parties its reasons for such a decision. "The reasons must be connected with the failure on the part of the Government to be satisfied that there was a case for reference. If the reasons had no connection, no bearing and no relevance to this question, when they are not reasons at all contemplated by sub-section (5) and . . . it would be open to the High Court to ask Government to give proper reasons which the law requires."[67] An order of mandamus can be issued by the court to enforce the discharge of the Government's statutory duty, that is, in effect to act in one or the other of the two ways permissible.

Court of Inquiry: These are fact-finding bodies constituted to enquire into any matter appearing to be connected with, or relevant to, an industrial dispute. The reference to a court is not a subsidiary proceeding which is dependent upon the existence of any proceeding relating to the industrial dispute before an industrial tribunal.[68] It is an altogether independent proceeding which can be pursued to its conclusion whether the proceeding, if any, before the industrial tribunal in respect of the industrial dispute is pending or not. The only thing necessary for giving jurisdiction or power to the Government to set up a court of inquiry is the existence of an industrial dispute. Courts of inquiry have rarely been set up, because the object sought to be achieved by such enquiry is fulfilled by the reference of a dispute to a tribunal for adjudication, which, besides ascertaining facts, can also give binding decisions.

Compulsory Adjudication: Compulsory adjudication is the most significant feature of the Industrial Disputes Act. Barring the efforts of conciliation officers, adjudication is the process most commonly resorted to by Governments and the parties for settlement of industrial disputes. Before the passing of the Amendment Act of 1956, the only authority provided in the law for adjudication was the industrial tribunal. There was no provision for appeal from the awards of industrial tribunals until the Industrial Disputes (Appellate Tribunal) Act of 1950 was passed. When the Appellate Tribunal was

[67] Firestone Tyre and Rubber Co. of India Ltd. *vs.* K. P. Krishnan, A.I.R. 1956 Bombay 273.

[68] Allen Berry & Co. Ltd. *vs.* A. Das Gupta, A.I.R. 1952 Calcutta 850.

abolished by the Amendment Act of 1956, it was felt that in order to raise the quality of the awards of industrial tribunals, it was necessary to lay down that tribunals would be presided over only by sitting or retired High Court Judges or by persons who had worked on tribunals or the Appellate Tribunal for not less than two years. Since the number of persons possessing such high qualifications was limited, steps were taken to create a lower level of courts for the adjudication of the comparatively less important issues which often clogged the files of industrial tribunals. The result was the creation of labour courts which could be presided over by any person who had held any judicial office in India for not less than seven years. This threw open the field to persons of the rank of District Judges, Sub Judges or even Munsiffs. By Amendment Act No. 36 of 1964 a person who has been a District Judge or an Additional District Judge for not less than three years can now be appointed to an industrial tribunal.

Matters which can be referred to labour courts are those mentioned in the Second Schedule to the Act. These include:

1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;
3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;
4. Withdrawal of any customary concession or privilege;
5. Illegality or otherwise of a strike or lock-out; and
6. All matters other than those specified in the Third Schedule.

Since the Third Schedule sets out the matters within the jurisdiction of industrial tribunals, the Second Schedule, in effect, means that all matters not specifically reserved for industrial tribunals can be adjudicated upon by labour courts. The Third Schedule includes such important matters as wages, allowances, hours of work, leave with wages, bonus, rationalization, retrenchment, etc. Where a dispute relates to any matter specified in the Third Schedule but is not likely to affect more than 100 workmen, it is open to the appropriate Government to refer the dispute to a labour court rather than an industrial tribunal (first proviso to sub-section (1) of section 10). The idea here is that matters which are not likely to affect large numbers of workers could be sent to the more easily constitutable labour courts so as to reduce the pressure on industrial tribunals. However, when an industrial tribunal has to be set up for adjudicating on the major issues, it would be a duplication of effort to set up also a labour court for dealing with minor issues. In order to avoid this, the law provides that any matter, whether specified in the Second Schedule or in the Third Schedule, can be referred to an industrial tribunal for adjudication (clause (d) of sub-section (1) of section 10).

One of the important objects of the setting up of the Appellate Tribunal

was coordination of the awards of the various tribunals so that there might be a measure of uniformity in regard to terms and conditions of service. Employers with establishments in two or more States have to maintain uniformity in such matters in all their establishments, as otherwise they may have to face serious industrial unrest. On more than one occasion in the past, two or more State Governments have had to refer disputes pertaining to the staff of big establishments having branches in several States to a common tribunal for adjudication. This is not always possible. Even when it is possible, the fact that the presiding officer presides not over one tribunal but over a number of different tribunals leads to difficult points of procedure. With the abolition of the Appellate Tribunal, the question of coordination and uniformity assumed added importance. It was then considered necessary to provide for the setting up of national tribunals for the adjudication of industrial disputes which involved questions of national importance or were of such a nature that industrial establishments situated in more than one State were likely to be interested in, or affected by, such disputes (sub-section (1A) of section 10). National tribunals are presided over by sitting or retired High Court Judges or by persons who have held the office of the Chairman or member of the Labour Appellate Tribunal for a period of not less than two years. A labour court, industrial tribunal or national tribunal consists of only one person. National tribunals are to be set up by the Central Government, while labour courts and industrial tribunals are to be set up by the appropriate Government. Assessors can be appointed to advise industrial tribunals and national tribunals but not labour courts. Every presiding officer of a labour court, industrial tribunal or national tribunal has to be an independent person and under 65 years of age (section 7C).

The proper constitution of the industrial tribunal is an important matter because of the far-reaching nature of some of the awards made by tribunals. Before the amendment of 1956, a tribunal could consist of more than one member, and, in fact, the more important tribunals such as the All India Collieries Tribunal and the All India Banks Tribunal consisted of three members each. At that time, the provision regarding the filling up of vacancies on tribunals was that "the appropriate Government shall, in the case of a chairman, and may, in the case of any other member, appoint another independent person." Basing their stand on the word "may", the Central Government did not fill up a temporary vacancy which occurred in the Banks Tribunal and allowed the absentee member to rejoin when his services became available again. The Government argued that if they chose not to fill up a vacancy, that would not affect the validity of the tribunal. The Supreme Court held[69] by a majority as follows:

"As Section 8 does not lay down that, in case the services of a member

[69] United Commercial Bank Ltd. *vs.* Their Workmen, A.I.R. 1951 S.C. 230

of the Tribunal cease to be available and the Government does not choose to make a new appointment in his place, the remaining members should continue to form the Tribunal, the constitution or reconstitution of the remaining members as a Tribunal could be made only under Section 7 of the Act and as there was no notification by the appropriate Government under Section 7 constituting the two remaining members of a Tribunal under the Act during the absence of C, the proceedings before these two members and the awards made and signed by them only during C's absence were void."

The two dissenting Judges held that there was a vacancy within the meaning of section 8 of the Act when the services of a member were placed at the disposal of the Boundary Disputes Tribunal, which provided an occasion for Government to exercise the discretion vested in it under section 8 of the Act to fill up the vacancy or not. The fact that the Government decided not to fill up the vacancy, they argued, could not render the tribunal an imperfectly constituted tribunal and the proceedings could validly be continued before the tribunal in spite of the vacancy. However, based on the majority view, the award was set aside. This eventually led to much agitation and many complications.

It was presumably because of the complications arising from the non-filling of vacancies in multi-member tribunals that the 1956 Amending Act specifically laid down that industrial tribunals and national tribunals should consist only of one member. While this change has undoubtedly done away with arguments such as whether a tribunal continued to be properly constituted when a vacancy was left unfilled or whether the failure on the part of one of the members to sign the award rendered it null and void, it is open to argument whether, in very important disputes, the collective wisdom of three members acting as a check or urge on one another and providing a machinery for internal discussion and debate is after all not better than the wisdom of one man which has not been put through the ordeal of criticism and debate.

Since a tribunal consists of one "person", it would appear that the setting up of a tribunal should be by name and not by the office of the person.[70] Where a Sessions Judge appointed as tribunal by office retired and his successor as Sessions Judge continued the adjudication, it was held that the award was invalid.

A tribunal constituted for a specific period automatically ceases to exist on the expiry of that period. The appropriate Government can then constitute another tribunal and refer the dispute to it. That would not be a case of the filling up of a vacancy and the consequences of such filling, namely, that the proceedings can be continued from the stage at which the vacancy was filled would not apply. The proceedings before the new tribunal would have to be *de novo* if so desired by either party.

[70] Aurangabad Mills *vs.* Industrial Court, A.I.R. 1951, Hyderabad 144.

On the other hand, it is open to the appropriate Government to appoint a standing industrial tribunal for the adjudication generally of industrial disputes in a State. The Government can refer particular disputes to that tribunal for adjudication. However, when a reference has been disposed of and an award made, the tribunal ceases to exist in relation to that dispute even though it happens to be a standing tribunal.

The character of industrial tribunals was explained by the Supreme Court[71] in the following terms:

"The functions and duties of the industrial tribunal are very much like those of a body discharging judicial functions, although it is not a court. The rules framed by the tribunal require evidence to be taken and witnesses to be cross-examined and re-examined. The Act constituting the tribunal imposes penalties for incorrect statements made before the tribunal. While the powers of the industrial tribunal, in some respects, are different from those of an ordinary civil court and it has jurisdiction and powers to give relief which a civil court administering the law of a land does not possess in the discharge of its duties, it is essentially working as a judicial body. The fact that its determination has to be followed by an order of the Government which makes the award binding or that in cases where Government is a party, the legislature is permitted to revise the decision, or that the Government is empowered to fix the period of the operation of the award do not, to my mind, alter the nature and character of the functions of the tribunal."

The nature of the decisions that go to make an award is, according to the Federal Court,[72] as follows:

"Adjudication does not, in our opinion, mean adjudication according to the strict law of master and servant. The award of the tribunal may contain provisions for settlement of a dispute which no court could order if it was bound by ordinary law, but the tribunal is not fettered in any way by these limitations. In Volume 1 of *Labour Disputes and Collective Bargaining* by Ludwig Teller it is said at p. 536 that industrial arbitration may involve the extension of an existing agreement or the making of a new one, or in general the creation of new obligations or modification of old ones while commercial arbitration generally concerns itself with interpretation of existing obligations and disputes relating to existing agreements. In our opinion, it is a true statement about the functions of an industrial tribunal in labour disputes."

[71] Bharat Bank Ltd. *vs.* Employees of Bharat Bank Ltd., A.I.R. 1950 S.C. 88.
[72] Western India Automobile Association *vs.* The Industrial Tribunal, A.I.R. 1949 F.C. 120.

Procedure: Labour courts, tribunals and national tribunals have the powers of a civil court under the Code of Civil Procedure for enforcing the attendance of persons and examining them on oath, compelling production of documents and material objects, issuing commissions for the examination of witnesses and for any other matter that may be prescribed. Subject to any rules framed by the appropriate Government, it is for the labour court, the industrial tribunal or the national tribunal to regulate its own procedure. Quasi-judicial tribunals like industrial tribunals are not hampered by the rules of evidence applicable to proceedings in a court of law and can rely on data available to them otherwise than from evidence adduced on behalf of the parties.[73] The Supreme Court has held that tribunals are not bound by the rigid rules of law.[74]

Commencement of Awards: The award of a tribunal becomes enforceable on the expiry of thirty days from the date of its publication, but if the appropriate Government (Central Government in the case of national tribunals) is of opinion that it will be inexpedient on public grounds affecting national economy or social justice to give effect to the whole or any part of the award, the appropriate Government or the Central Government may, by notification in the official gazette, declare that the award shall not become enforceable on the expiry of the period of thirty days. On such declaration the appropriate Government or the Central Government may, within ninety days from the date of publication of the award, make an order rejecting or modifying the award and shall, on the first available opportunity, lay the award together with a copy of the order before the Legislature of the State or before Parliament. When an award, as rejected or modified by an order made by Government, is laid before the Legislature of a State or before Parliament, such award becomes enforceable on the expiry of fifteen days from the date on which it was so laid. Subject to these provisions regarding the enforceability of awards, an award comes into operation with effect from such date as may be specified in it but where no date is specified, it comes into operation on the date when the award becomes enforceable (section 17A).

Period of Operation of Awards: An award remains in operation for a period of one year from the date on which it becomes enforceable. It is, however, open to the appropriate Government to reduce this period to such period as it thinks fit. The appropriate Government may, before the expiry of the period initially fixed, extend the period of operation by any period not exceeding one year at a time so that the total period of operation of an award does not exceed three years from the date on which it came into operation. Notwithstanding the expiry of the period of operation of an award, the award

[73] Electric Mechanical Industries *vs*. Industrial Tribunal, A.I.R. 1950, Madras 839.
[74] Bharat Bank Ltd. *vs*. Employees of Bharat Bank Ltd., A.I.R. 1950, S.C. 188.

continues to be binding on the parties until a period of two months has elapsed from the date on which notice is given by any party bound by the award to the other party or parties intimating its intention to terminate the award (section 19).

Strikes and Lock-outs: In a public utility service, no workman may go on strike without giving to the employer notice of strike within six weeks before striking or within 14 days of giving such notice or before the expiry of the date of strike mentioned in the notice or during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings (section 22). The employer has a corresponding liability in respect of lock-outs. No workman employed in any industrial establishment may go on strike in breach of contract and no employer may declare a lock-out

(*a*) during the pendency of conciliation proceedings before a board and seven days after the conclusion of such proceedings;
(*b*) during the pendency of proceedings before a labour court, tribunal or national tribunal and two months after the conclusion of such proceedings; or
(*c*) during any period in which a settlement or award is in operation, in respect of any of the matters covered by the settlement or award (section 23).

A strike or lock-out contrary to the provisions mentioned above would be illegal (section 24). Similarly a strike or lock-out continued in contravention of an order made under section 10(3) of the Act prohibiting continuance of a strike or lock-out after reference of a dispute would be illegal. A lock-out declared in consequence of an illegal strike or a strike declared in consequence of an illegal lock-out would not be deemed illegal.

Lay-off and Retrenchment: Chapter VA of the Industrial Disputes Act dealing with lay-off and retrenchment contains certain very important provisions introduced by the Amendment Act XLIII of 1953. Unlike the rest of the Industrial Disputes Act, which is essentially a procedural law, these provisions grant substantive benefits to workers in the event of lay-off and retrenchment—benefits which, in other circumstances, might have been embodied in settlements or awards.

The provisions relating to lay-off provide that when a workman (other than a *badli* workman or a casual workman) who has completed not less than one year of continuous service under an employer is laid-off, he has to be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene, compensation at 50 per cent of the total of the basic wages and dearness allowance that would have been payable to him had he not been laid-off. The compensation is ordinarily

payable to a workman during any period of twelve months for a maximum of forty-five days. However, if, during any period of twelve months, a workman is laid-off for more than 45 days, whether continuously or intermittently, and the lay-off after the expiry of the first 45 days comprises continuous periods of one week or more, the workman has to be paid for all the days comprised in every such subsequent period of lay-off for one week or more compensation at the prescribed rates.

Compensation for lay-off is not admissible in all industries and establishments covered by the Industrial Disputes Act. It is available only in industrial establishments specially defined for the purpose, and these include only factories as defined in the Factories Act, mines as defined in the Mines Act and plantations as defined in the Plantations Labour Act. Again, compensation for lay-off is not available in industrial establishments which are of a seasonal character or in which work is performed only intermittently and in industrial establishments in which less than 50 workmen on an average per working day have been employed in the preceding calendar month. The responsibility for deciding, in the event of a dispute, whether an establishment is of a seasonal character or whether work is performed therein only intermittently, is of the appropriate Government. Even if this question arises in the course of an adjudication or some other proceeding, the jurisdiction to take a decision is that of the appropriate Government and not of the tribunal or other authority before which the matter has arisen. The decision of the appropriate Government is, however, not a purely administrative one; it is quasi-judicial in character and the rules of natural justice have to be followed. Thus, if an order is passed without giving an opportunity to one of the parties to adduce evidence and to make representation in rebuttal of the information which the Government has collected through its Labour Department, it cannot be sustained.

Before sub-section (2) of section 25C, dealing with payment of lay-off compensation after the initial 45 days, was inserted in its present form in 1956 the corresponding provision of the earlier law said that "if during any period of twelve months, a workman has been paid compensation for 45 days, and during the same period of twelve months he is again laid-off for further continuous periods of more than one week at a time, he shall, unless there is any agreement to the contrary between him and the employer, be paid for all the days during such subsequent periods of lay-off compensation, etc." This was interpreted[75] by the Supreme Court to mean that if a workman was laid-off continuously for more than 45 days, that is, without a break and hence without a lay-off "again", he would be entitled to compensation for only 45 days and no more. The provision regarding payment for subsequent periods would apply only if the workman had been paid compen-

[75] Messrs. Modi Food Products & Co., Ltd., *vs.* Fakir Chand Sharma and Others, 1956 I L.L.J. 749.

sation for 45 days and was "again" laid-off for further periods of more than one week at a time. The subsequent lay-offs must be distinct from that for which payment had been made for 45 days. This would not be the case if the lay-off was a continuous and prolonged one. As the intention was that payment should be made even if a lay-off was a continuous one extending beyond 45 days, the Act was amended, and the provision for further payment now reads: ". . . laid-off for more than 45 days, whether continuously or intermittently."

These provisions have since undergone substantial changes by Amendment Act No. 35 of 1965 which came into force with effect from 1 December 1965. As the law now stands, a person who is laid-off "shall be paid by the employer for all days during which he is so laid-off, except for such weekly holidays as may intervene." There is a proviso which says that if during any period of twelve months a workman is laid-off for more than forty-five days, no compensation shall be payable in respect of any period after the expiry of the first forty-five days "if there is an agreement to that effect between the workman and the employer."

When payment beyond 45 days becomes necessary, it "shall be lawful" for the employer to retrench the workman in accordance with the provisions of section 25F of the Act, deducting from the compensation payable for retrenchment any compensation paid to the workman for lay-off during the preceding twelve months.

No compensation for lay-off is payable if the workman concerned refuses to accept alternative employment in the same establishment or in any other establishment belonging to the same employer situated in the same town or village or within a radius of five miles from the establishment to which he belongs if, in the opinion of the employer, such alternative employment does not call for any special skill or previous experience and can be done by the workman. In that case, the wages normally payable to the workman should be offered for the alternative employment. Lay-off compensation is not payable if the lay-off is due to a strike or slowing down of production on the part of workmen in another part of the establishment (section 25E).

The provisions relating to retrenchment (section 25F) lay down that no workman employed in an industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until he has been given one month's notice or pay in lieu of such notice and compensation at the rate of 15 days' average pay for every completed year of service or any part thereof in excess of six months. The word "retrenchment" has been defined in clause (oo) of section 2 of the Act as meaning the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but not including voluntary retirement, retirement on reaching the age of superannuation and termination of service on the ground of continued ill health. Though this definition says that retrenchment means

termination of service "for any reason whatsoever", the Supreme Court has explained[76] the concept of retrenchment as follows:

> "Retrenchment connotes in its ordinary acceptation that the business itself is being continued but that a portion of the staff or the labour force is discharged as surplusage and the termination of the services of all the workmen as a result of the closure of the business cannot, therefore, be properly described as retrenchment. Though there is a discharge of workmen both when there is retrenchment and closure of business, the compensation is to be awarded under the law, not for discharge as such but for discharge on retrenchment, and, as retrenchment means in ordinary parlance discharge of the surplus, it would not include discharge on closure of business."

The concept of the term "retrenchment" was further clarified in another case[77] by the Supreme Court. The Supreme Court held that no retrenchment compensation was payable to a workman (*i*) whose services were terminated by an employer on a real and *bona fide* closure of business, or (*ii*) when termination occurred as a result of transfer of ownership from one employer to another. This decision led to two amendments now embodied in section 25FF and section 25FFF of the Act. Section 25FF says that where the ownership or management of an undertaking is transferred from the employer to a new employer, every workman who has been in continuous service for not less than one year in that undertaking immediately before such transfer shall be entitled to notice and compensation as for retrenchment unless an arrangement is entered into with the new employer to the effect that

(*a*) the service of the workman has not been interrupted by such transfer;
(*b*) the terms and conditions of service applicable to the workman after such transfer are not in any way less favourable to the workman than those applicable to him immediately before that transfer; and
(*c*) the new employer is, under the terms of such transfer or otherwise, legally liable to pay to the workman, in the event of his retrenchment, compensation on the basis that his service has been continuous and has not been interrupted by the transfer.

Under section 25FFF of the Act where an undertaking is closed down for any reason whatsoever, every workman who has been in continuous service for not less than one year in that undertaking immediately before such closure shall be entitled to notice and compensation as if the workman had been retrenched. There is however, a provision that where the undertaking is closed down on account of unavoidable circumstances beyond the control of the

[76] Pipraich Sugar Mills Ltd. *vs.* Pipraich Sugar Mills Mazdoor Union, A.I.R. 1957, S.C. 95.
[77] Barsi Light Railway Co. *vs.* K. N. Joglekar, A.I.R. 1957 S.C. 121.

employer, the compensation will be limited to the workman's average pay for three months. Financial difficulties or difficulties arising from the accumulation of undisposed of stocks are not to be deemed to be unavoidable circumstances for the purpose of this provision. There is also a provision that where an undertaking set up for the construction of buildings, bridges, roads, canals, dams, etc., is closed down on account of the completion of the work within two years from the date on which the undertaking was set up, no workman shall be entitled to any compensation, but that if the construction work is not so completed, he shall be entitled to notice and compensation for every completed year of service or any part thereof in excess of six months.

There are also other incidental provisions relating to retrenchment. As among citizens of India the workman who was the last person to be employed in a category is to be retrenched first unless, for reasons to be recorded, the employer decides to retrench any other workman. It would appear that this order of retrenchment does not apply to persons who are not citizens of India and that they can be retrenched irrespective of their seniority. If the employer wants to recruit workmen after retrenchment, he should give an opportunity to the retrenched workmen to offer themselves for re-employment.

Maintenance of Conditions of Service and Employment during Conciliation and Adjudication: A section of the Industrial Disputes Act which has given rise to much litigation is section 33. As originally enacted in 1947, it laid down that no employer should, during the pendency of any conciliation proceedings or proceedings before a tribunal in respect of an industrial dispute, alter to the prejudice of the workmen concerned in such dispute the conditions of service applicable to them; nor, save with the permission in writing of the conciliation or adjudication authority, should he discharge, dismiss or otherwise punish any such workman, except for misconduct not connected with the dispute. When an industrial dispute is in progress—and often industrial disputes drag on for months or even years—tempers are frayed and occasions for annoyance and indiscipline are many. The operation of this section brought forth many complaints that taking advantage of the last portion of the section, some employers were freely resorting to discharges, dismissals and punishments of workmen involved in conciliation or adjudication proceedings on the pretext that the action taken was for a misconduct not connected with the dispute. As Government found it difficult to deal with these numerous complaints, they thought it advisable to plug the loophole and replaced the existing provision by a provision incorporated in the Industrial Tribunal (Appellate Tribunal) Act 1950 which said that during the pendency of conciliation or adjudication proceedings no employer could alter the conditions of service or discharge or punish a workman concerned in the dispute save with the express permission of the conciliation authority or the tribunal concerned. Thus it became no longer permissible for the employer

to punish a workman for misconduct not connected with the dispute, except with the permission of the authority concerned.

It was now the turn of the employers to complain bitterly. They represented that on the strength of the new protection afforded, workers were getting emboldened to take the law in their hands and that there had been many cases in which workers had manhandled managerial staff or otherwise committed offences which had nothing to do with the industrial dispute which was under settlement. The provision in the 1950 Act was again amended to its present form by the amending Act 36 of 1956. Now, if an industrial dispute is pending before a conciliation or adjudication authority, no employer shall alter the conditions of service of workmen or discharge or punish them save with the express permission of the authority concerned "in regard to any matter or misconduct connected with the dispute." In regard to matters or misconducts not connected with the dispute, the employer's freedom of action has been restored. The only condition laid down is that no workman shall be discharged or dismissed unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer. Thus, while the employer is entitled to discharge, dismiss or punish a worker, he has got to be very careful that this does not appear to be vindictive because the approval of the authority has subsequently to be obtained.

A serious objection that used to be raised by the workers against the granting of such powers to employers was the fear that in the tense situation prevailing during an adjudication employers might seek to make workers' organizations impotent by dismissing active trade union workers. As this apprehension was not wholly unjustifiable, a provision was made to the effect that even in regard to matters not connected with the dispute the employer could not alter the conditions of service of, or discharge or punish, a protected workman, that is a workman who, being an officer of a registered trade union connected with the establishment, is recognized as such, without the express permission in writing of the authority before which the proceeding is pending. The number of protected workmen is limited by the Act so that this privilege may not be abused by workmen.

A considerable amount of case law has accumulated regarding the scope and purport of section 33 of the Industrial Disputes Act. Certain important points emerge out of these legal rulings. Suspension without pay pending enquiry cannot be considered to be punishment and would not require permission. A lock-out would not be covered by the provisions of section 33 of the Industrial Disputes Act, as it would not have the effect of changing the conditions of service of employees and would also not involve the automatic termination of the services of the employees.

In according or withholding permission it is not within the power of the authority concerned to impose any conditions. The object of section 33 of the Industrial Disputes Act is to protect the workman concerned in pending

disputes or adjudications against victimization by the employer. Some employers are apt to feel exasperated over the actions of their workmen in dragging them to courts and the temptation will be strong to get rid of troublesome workers. Moreover, even where the action taken by the employer is fully justified, workers might feel, quite honestly, that the employer's action is retaliatory and vindictive. The result of such strained feelings will be to make the settlement of the main dispute difficult. While the conciliation authority or tribunal may satisfy itself as to the *bona fides* of the employer, it cannot impose conditions unconnected with the safeguard contained in section 33 of the Industrial Disputes Act. It would not, therefore, be proper for a tribunal to lay down what the terms of a retrenchment should be.

Contravention of the provisions of section 33 of the Act can be taken either to a criminal court for punishment of the employer under section 31 of the Act or to a labour court or tribunal for adjudication under section 33A of the Act. In criminal proceedings the only question for consideration would be whether the provisions of section 33 were contravened or not, but in an adjudication under section 33A of the Act the merits of the action taken by the employer would be fully open to scrutiny.

Since a tribunal giving permission to impose a punishment or to discharge a workman cannot go into the merits of the proposed action, that action, if taken, could form the subject matter of an industrial dispute which could be referred to another tribunal for adjudication.

The principles behind the grant of permission under section 33 of the Industrial Disputes Act were summarized by the Supreme Court in a recent case[78] as follows:

"Section 33 of the Act does not confer any jurisdiction on the Tribunal to adjudicate on a dispute but it merely empowers the tribunal to give or withhold permission to the employer during the pendency of an industrial dispute to discharge or punish a workman concerned in the industrial dispute. And in deciding whether permission should or should not be given the Industrial Tribunal is not to act as a reviewing tribunal against the decision of the management but to see that before it lifts the ban against the discharge or punishment of the workman the employer makes out a *prima facie* case. The principles governing the giving of the permission in such cases are that the employer is not acting *mala fide*, is not resorting to any unfair labour practice, intimidation or victimization, and there is no basic error or contravention of the principles of natural justice. Therefore, when the tribunal gives or refuses permission, it is not adjudicating an industrial dispute, its function is to prevent victimization of a workman for having raised an industrial dispute. The nature and scope of the proceedings under section 33 shows that removing or refusing to remove the ban on punishment or dismissal of workmen does

[78] Mackenzie & Co., Ltd. *vs.* Its workmen, 1959 I L.L.J. 285.

not bar the raising of an industrial dispute when as a result of the permission of the Industrial Tribunal the employer dismisses or punishes the workman." Thus a *prima facie* case and *bona fide* intentions are both necessary for the grant of permission.

The Supreme Court (Gajendragadkar, J.) has in another case[79] summarized the position as follows:

"Where an application is made by the employer for the requisite permission under section 33, the jurisdiction of the tribunal in dealing with such an application is limited. It has to consider whether a *prima facie* case has been made out by the employer for the dismissal of the employee in question. If the employer has made a proper enquiry into the alleged misconduct of the employee and if it does not appear that the proposed dismissal of the employee amounts to victimization or an unfair labour practice, the tribunal has to limit its enquiry only to the question as to whether a *prima facie* case has been made out or not. In these proceedings it is not open to the tribunal to consider whether the order proposed to be passed by the employer is proper or adequate or whether it errs on the side of excessive severity: nor can the tribunal grant permission, subject to certain conditions, which it may deem to be fair. It has merely to consider the *prima facie* aspect of the matter and either grant the permission or refuse it according as it holds that a *prima facie* case is or is not made out by the employer."

While sub-sections (1) and (3) of section 33 stipulate the obtaining of the "express permission in writing" of the authority, sub-section (2) refers only to the "approval of the action taken by the employer." The jurisdiction of the authority in according approval of the action already taken cannot certainly be wider than that of the authority in granting express permission to an action which cannot be taken without such permission. In fact the jurisdiction would be more limited. Under sub-section (2), the employer has far wider powers than under sub-sections (1) and (3), and the jurisdiction of the authority to look into the employer's action is correspondingly less. It would seem that under section 33 (2) (b), the jurisdiction of the tribunal is limited to seeing whether a *prima facie* case has been made out against the employee. The tribunal cannot substitute its own judgment for that of the employer.

Section 33 of the Act relates to action taken in regard to workmen "concerned in such dispute." According to earlier decisions, it is not all the workers of an establishment that are concerned in every dispute arising in that establishment. True, when a dispute referred to a tribunal is of a collective nature between the management and the workmen generally, irrespective of whether or not they are members of a particular union, it obviously concerns all workmen. But in other cases the words "concerned in such dispute" would mean concerned directly or primarily and not merely interested in the dispute. If, for instance, a dispute relates to the reinstatement

[79] Punjab National Bank vs. Their workmen, 1959, II L.L.J. 666.

of a few workmen, the other workmen would be interested in the case, but not concerned in it. Opinion on this point is, however, not unanimous. Another High Court has held that where the dispute, though relating only to the dismissal of some specific workmen, was raised by a substantial number of fellow workers, the other workmen in the industry must be held to be workmen concerned in the dispute. It is necessary to interpret the words "concerned in the dispute" with reference to the circumstances of each case.

The Supreme Court has since ruled[80] that the expression "workmen concerned in such dispute" should not be limited to such of the workmen as are directly concerned with the dispute in question. It has held that the phrase under consideration should not be given the narrow interpretation to include only the workmen directly or actually concerned in such dispute but that it should be construed to mean and include all workmen on whose behalf the dispute has been raised as well as those who sponsor the dispute and those who would be bound by the award which may be made in such dispute.

Recent Amendments to the Industrial Disputes Act: Since the preparation of this chapter important amendments to the Act have been enacted by Parliament under Amendment Acts No. 36 of 1964 and No. 35 of 1965. The more important of these amendments will be noticed below.

The Amendment Act No. 36 of 1964 came into force on 19 December 1964. It declared the Central Government to be the "appropriate Government" in respect of industrial disputes concerning the Employees' State Insurance Corporation, the Agricultural Refinance Corporation, and cantonment boards. The qualifications of persons to be appointed to tribunals under section 7A of the Act were somewhat diluted and a person who "has, for a period of not less than three years, been a District Judge or an Additional District Judge" was rendered qualified for appointment to tribunals. This was quite a fall from the level of a High Court Judge to that of a Senior Sub-Judge. Substantial changes were made in section 10A dealing with the voluntary reference of disputes to arbitration. A new sub-section (3A) was added to the effect that where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may issue a notification making the employers and workmen who are not parties to the arbitration such parties so as to be bound by the arbitration award. This intention was suitably incorporated also in section 18 dealing with the persons on whom settlements and awards are binding. This was a measure of injecting compulsion into voluntary arbitration. In section 33C relating to the recovery of money due from an employer, a time-limit of one year was prescribed for putting in applications for recovery

[80] New India Motors *vs.* K. T. Morris, 1960 I L.L.J. 551.

under this special procedure. Other amendments do not call for comments as they do not involve any major matter of principle.

The Amendment Act No. 35 of 1965, which came into force on 1 December 1965, brought within the scope of the Central Government industrial disputes in the Indian Airlines and in Air-India Corporations. A very important principle bearing on the question of individual disputes as opposed to collective disputes was settled in the new section 2A. Under this section, where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman or any union of workmen is a party to the dispute. Thus in one stroke the legislature has set at naught a vast volume of judicial decisions on the subject of what constitutes an "industrial dispute." The Statement of Objects and Reasons says: "In view of this (judicial decisions), cases of individual dismissals and discharges cannot be taken up for conciliation or arbitration or referred to adjudication under the Industrial Disputes Act, unless they are sponsored by a union or a number of workmen. It is now proposed to make the machinery under the Act available in such cases." This piece of legislation cannot but weaken trade unionism and burden still further the over-loaded state machinery by making it the saviour of the lost individual. Another important amendment relates to the maximum period for payment of lay-off compensation under section 25C of the Act. Before the amendment a workman, on being laid-off, was entitled to receive compensation for forty-five days during any period of twelve months and for any lay-offs thereafter comprising continuous periods of one week or more. The Statement of Objects and Reasons says that "this provision is open to abuse inasmuch as workmen could be denied lay-off compensation by being made to work for some days in each week after the first forty-five days of lay-off". This abuse is sought to be done away with by laying down that compensation would become payable for all the days of lay-off beyond the first forty-five days, whether the period is continuous for a week or not. Power has also been taken in section 29 of the Act for the imposition of continuing penalties for continued breach of settlements and awards.

CHAPTER VIII

RECENT DEVELOPMENTS IN INDUSTRIAL RELATIONS

Rapid Survey: It is proposed here to make a rapid survey of developments in the field of industrial relations, with special reference to the efforts made by the Government of India in shaping them, since the attainment of Independence in 1947. As we have already seen, the state of industrial relations in the middle of 1947 was truly chaotic. The number of man-days lost had increased alarmingly in 1946 and 1947; the prices of commodities were rapidly rising; and the real wages of labour were steadily falling. It was one of the first tasks of the Government of independent India to take steps to arrest this dangerous deterioration in the economic and industrial health of the nation. Accordingly, an Industries Conference attended by representatives of Governments, of employers and of workers and several leading businessmen was called in December 1947. There was general consensus of opinion at the Conference that improvement in labour-management relations was perhaps the most important prerequisite to increased production. The Conference arrived at an agreement which was embodied in what came subsequently to be known as the Industrial Truce Resolution. The Resolution said that increase in production, which was so vital to the economy of the country, could not be achieved without the fullest cooperation between labour and management and that "the system of remuneration to capital as well as labour must be so devised that while in the interests of the consumers and the primary producers excessive profits should be prevented by suitable measures of taxation and otherwise, both will share the product of their common effort after making provision for payment of fair wages to labour, a fair return on capital employed in the industry and reasonable reserves for the maintenance and expansion of the undertaking." This Resolution was accepted by the Central Government in their Statement on Industrial Policy issued on 6 April 1948.

The machinery contemplated for the implementation of the Industrial Truce Resolution was to consist of a Central Advisory Council covering the entire field of industry with committees under it for each major industry together with appropriate provincial advisory boards, provincial committees for each major industry, and subcommittees of provincial committees for dealing with specific questions such as production, wage fixation, distribution of profits and industrial relations. In addition to these tri-partite agencies, works committees and production committees, which were to be bi-partite in character, were to be set up for each industrial establishment. Though few tangible results ensued from all this elaborate machinery, por-

tions of which were set up with varying degrees of enthusiasm, two *ad hoc* committees set up by the Government, namely, the Committee on Profit-Sharing and the Committee on Fair Wages, made recommendations of a far-reaching nature which, although not officially or statutorily implemented, have greatly influenced bonus and wage settlements ever since. The Committee on Profit-Sharing evolved, by majority agreement, a formula for profit-sharing which, with suitable modifications, subsequently formed the basis of the formula laid down by the Labour Appellate Tribunal for the calculation of bonus. The latter formula has generally stood the test of judicial scrutiny. Similarly, the Committee on Fair Wages explained at length the various concepts of the minimum wage, the living wage and the fair wage and provided principles and some standards for the calculation of fair wages. Tribunals and Courts, including the Supreme Court, have since accepted those principles and directed that wage investigations and fixations should seek to implement them as far as possible. A Fair Wages Bill based on the recommendations of the Committee on Fair Wages, but with certain modifications, was introduced in Parliament in 1951 but was not proceeded with on account of opposition from certain quarters. The recommendations of the Committee on Profit-Sharing were considered at length by the Central Government with a view to the evolution of a statutory scheme, but the attempt had to be given up as it was felt that a rigid scheme might not prove equally suitable for all industries or even for all units in an industry. Though no statutory schemes emerged out of the deliberations of these two committees, it is certain that the recommendations of the committees have greatly influenced and guided bonus awards and wage fixations during the last decade or so.

Reference has already been made to the Indian Trade Unions (Amendment) Act, 1947, which sought to provide for the statutory recognition of unions and the elimination of unfair practices by employers and recognized trade unions. The reasons why this enactment was not brought into force have also been explained. This legislation was important from two points of view. First, though it did not provide for the concept of the representative union with exclusive bargaining rights, it paved the way for the eventual fruition of that concept by providing for a half-way house, namely, a recognized union with limited powers. Secondly—and this was even more important—the law sought to check unfair labour practices—a measure everywhere recognized as an important aid to the development of strong and independent unions. It is unfortunate that the legislation could not be implemented because of its unsuitability for associations and unions of civil servants. It would have been in the interest of the development of trade unionism in the country if this law had been made applicable only to non-civil servants by specific amendment of the law.

Labour Relations Bill: When the Industrial Disputes Act, 1947 had been in

existence for some time, it was realized that though it had proved useful, it was not comprehensive enough to meet the many situations that arose in the field of industrial relations from time to time. The result was the framing of a comprehensive Bill, called the Labour Relations Bill, by the Central Government in January 1950. As the new legislation was expected to replace all Central and State legislations on the subject of industrial relations, it had necessarily to be elaborate and to take in the special features of those laws. Thus standing conciliation boards and labour courts (lower in rank to tribunals) which existed in some States had to be provided for. The Labour Appellate Tribunal, for the creation of which employers had been campaigning for a long time, was another authority provided for. The problem of civil servants had already caused anxiety to Government. The new legislation sought to make it clear that civil servants had no right to strike by defining the key expression "employee" so as to exclude from it civil servants. If civil servants were not to be allowed the protection of the law, it was obvious that other arrangements were necessary for safeguarding their legitimate interests. While civil servants could be dismissed for non-attendance due to a strike, they could not be prosecuted in a criminal court, for the law did not specifically declare strikes by civil servants illegal. The Bill made it abundantly clear that civil servants had to solve their problems otherwise than by going on strikes. One of the important objects of the Bill was the encouragement of collective bargaining and the providing of machinery for the certification of the bargaining agent. The Bill contained also provisions relating to retrenchment, go-slow, and control of certain categories of mismanaged industrial undertakings. In providing for the control of industrial undertakings the Bill anticipated, and in fact hastened, the enactment of the Industries (Development and Regulation) Act, 1951. In short, the Bill was very comprehensive, but as it contained several controversial provisions, it did not stand any chance of being accepted unanimously.

The Statement of Objects and Reasons which explained the scope and approach of the Bill was as follows:

"The Labour Relations Bill which breaks new ground is the first attempt at providing the country with a comprehensive law on the subject, superseding the Industrial Disputes Act, 1947 and similar legislations obtaining in States. Uniformity in the basic law governing labour relations has, in recent times, become imperative, particularly in view of the necessity for the setting up of an All-India Appellate Tribunal with jurisdiction over all Union and State Tribunals.

The Industrial Employment (Standing Orders) Act, 1946, which provides for the framing of standing orders regulating the day-to-day working of an establishment is now a separate enactment, but its provisions have been incorporated in the Bill as they cover matters which are essentially part and parcel of the relations between management and labour. The

Bill is extensive in scope and applies to all categories of employees except civil servants, persons employed in the defence forces and domestic servants and to all establishments working with more than ten employees.

Three new authorities are envisaged in the Bill, namely, Standing Conciliation Boards, Labour Courts and the Appellate Tribunal. Standing Conciliation Boards and Labour Courts have been tried in certain States with a fair measure of success. The Appellate Tribunal, the setting up of which will be the responsibility of the Union, is a new authority of considerable importance. Lack of uniformity in the awards given by the large number of Tribunals in the country has resulted in divergent, if not conflicting, decisions, causing much embarrassment to employers, particularly those with establishments in more than one State, and restlessness and expectancy among employees who find their compeers in a neighbouring district or State much better off than themselves. It will be the responsibility of the Appellate Tribunal to ensure all possible coordination and uniformity in the settlement of labour disputes throughout the country. It will be noticed that though a large number of authorities are enumerated in the Act, some are purely optional, some are to be set up only when the necessity arises, and only two, viz., Registering Officers and Conciliation Officers, have of necessity to be appointed from the start.

Constitutional and practical difficulties have made it necessary for the Union to assume a wider jurisdiction than in the past. Regulation and control of a number of industries by the Union may necessitate the regulation of labour relations in some of those industries by the Union. Power has been taken in the Bill for that purpose, but the assumption of control by the Union will not be automatic or even immediate and would take place only when a situation arose warranting such a course. Even in that case, the States concerned would be consulted beforehand. Where establishments such as banks, insurance companies, transport services, etc., have branches and activities in more than one State, practical difficulties necessitate the regulation of labour in those employments by the Union.

Faith in the efficacy of friendly negotiations between an employer and his employees is the very basis of the Bill. Negotiations must be attempted at an early stage and in a proper atmosphere and not after a strike has already taken place or a Conciliation Officer has been forced to come on the scene. The Bill provides for a notice requiring the other party to start negotiations within seven days. If the party which receives the notice takes advantage of that opportunity (which it must in a public utility service), negotiations must be concluded within 14 days in the case of a public utility service and 7 days in any other case unless those periods are extended by mutual agreement. Where negotiations break down, a 14 days' notice is required in public utility services before a strike or lock-out can be declared.

Collective bargaining which is the recognized procedure in the West for

the regulation of labour-management relations has hitherto not received in this country the attention it deserves. An attempt has been made to introduce a simple procedure for collective bargaining which may be adopted in place of the less formal procedure for negotiation and conciliation. Even that simple procedure may, in the first instance, be suited only to the industrially advanced States. After experience has been gained of the working of collective bargaining, it may be necessary to improve the procedure, but it has been considered advisable not to complicate it by making it too rigid from the very beginning.

Where Labour Courts are set up in a State, they will have jurisdiction over all disputes except those mentioned in Schedule II which will continue to remain under the jurisdiction of Labour Tribunals. Where Labour Courts are not set up, all disputes are referable to Labour Tribunals at the discretion of the appropriate Government.

Among the other special features of the Bill may be mentioned the provisions relating to retrenchment, go-slow policy and the exercise of control over certain categories of undertakings in certain circumstances. Retrenchments can be effected only after the prescribed notice has been given and gratuity paid. A go-slow policy, whether on the part of employers or employees, if proved before a Labour Tribunal, will be deemed to be illegal lock-out or strike and dealt with as such. The power to exercise control over undertakings is restricted to those deemed essential for the maintenance of order and for supplies and services essential to the life of the community and is subject to stringent safeguards.

A serious drawback of the Industrial Disputes Act, 1947 is the fact that the provisions contained in it for the enforcement of settlements and awards are too weak to be effective and that persons entitled to relief find it very difficult to enforce their rights. The Bill seeks to remedy those defects. The penalty for breach of a settlement, collective agreement, order or award has been substantially increased, and amounts due from an employer may be recovered as if they were arrears of land revenue. In suitable cases Government might step in and exercise control over the undertaking. Employees are liable to forfeit their claims to bonus and the employer's share of the provident fund and to be dismissed from service. Trade unions are liable to forfeit their registration and recognition and certified bargaining agents, their certificates.

It should be the goal of any progressive labour policy to so influence labour-management relations as to make the withdrawal of State intervention possible. A strong trade union movement which is conscious alike of its rights and responsibilities—one that will stand on its own legs and not lean for ever on a crutch—can alone make industrial peace enduring. It is the aim of the Bill to build up labour-management relations on such sure foundations, and if rights have been tempered with responsibilities, the scales have been held even as between the parties."

The Bill was examined at length at the Indian Labour Conference held in March 1950. In his opening speech to the Conference, the Labour Minister said as follows:

"The experience that we have gained of the working of that Act (Industrial Disputes Act, 1947) has encouraged us to believe that a more systematic, if somewhat elaborate, approach to the problem of labour-management relations will pay good dividends. The edifice that we are now planning may look more spacious and imposing with its many columns and facades than the simple structure to which we are hitherto accustomed, but it is none the less being built on practically the same foundations which were laid three years ago and which have stood the stress and strain of a difficult postwar era."

The Bill brought forth strong protests from certain sections of the Conference. The representatives of the All India Trade Union Congress said that their organization was totally opposed to the underlying principles of both the Labour Relations Bill and the Trade Unions Bill. The Bills had been unduly weighted on the side of capital. The desire of Government to hold the scales even as between employers and workers really meant that employers, who had immense resources at their disposal, were given a free hand to deal with labour as they pleased. Thus while employers were given freedom to dispense with surplus labour without assigning any reasons, the workers' fundamental right to strike was being taken away. Such an attitude, the All India Trade Union Congress said, constituted an infringement of the basic principles of trade unionism. The compulsory reference of disputes to industrial tribunals and the prohibition of strikes pending decisions by such tribunals weighed heavily against the working class.

The Hind Mazdoor Sabha opposed the Bill on the ground that the existing legislation had not been given a fair trial and that the enactment of additional legislation would only retard the smooth growth of the trade union movement. The imposition of additional responsibility on the Government, which was implicit in the Bills, might not be conducive to the growth of collective bargaining. The Sabha was critical of the provisions relating to civil servants, as, in its opinion, any discrimination between organizations of civil servants and other unions might create a split in the ranks of labour. The right to strike was a logical corollary of the right to work and while it could be surrendered by workers, it could not be taken away by statutory regulation. The penalties prescribed in the Bills were too heavy and if adhered to strictly, might drive the labour movement underground.

The Indian National Trade Union Congress expressed itself as not opposed to the Bill, though it had objections to particular provisions of the Bill. One of its objections, which is of special interest, was that the provision that recognition could be obtained by a trade union by mutual agreement with

the employers might accelerate the growth of company unions which was very injurious to the healthy development of the trade union movement. The provision that the number of outsiders in trade unions should be restricted to four was also opposed by the Congress as it felt that the number of outsiders should be one-fourth of the total number of the executive without any numerical limit. The exclusion of civil servants from exercising certain rights allowed to other employees constituted an undue infringement of the rights of the working class. The clubbing of even the menial staff of certain Government departments with civil servants was very unfair. The proposal that dismissal for good cause should not be taken notice of by tribunals would leave workers entirely in the hands of the employer.

The Bill was debated on in the Legislature and scrutinized by a Select Committee of the Legislature. It was obvious that there were serious objections to many aspects of the Bill. The main defect of the Labour Relations Bill, as seen in retrospect, was that industrial relations were sought to be shackled by too many statutory restrictions and controlled by too many authorities and that they were allowed neither the scope nor the favourable climate necessary for natural and uninhibited growth. The plethora of statutory authorities provided for dealing with industrial disputes introduced an excessive and frustrating extent of legalism in the adjustment of industrial relations. The provisions for the certification of bargaining agents were far too involved, and for all the complications introduced by those provisions, there was little guarantee that collective bargaining would be a success so long as compulsory adjudication lurked in the background. The Labour Relations Bill would have been efficient in its own way if the object had simply been to instil discipline into the parties and to make them tread the straight and narrow path chalked out by the Government. If, however, the object was to make the parties self-reliant and to enable them to wander along and discover for themselves the right way to a difficult goal, the Bill acted as an undue fetter which would not have allowed them any scope for initiative or imagination. The Labour Minister must have been greatly impressed by the weight of opinion against the Bill and wisely decided to forget it until it was disowned by his successor.

Labour Appellate Tribunal: The Government's policy in the matter of providing for appeals from the awards of industrial tribunals has been characterized by hesitation and indecision. When employers started an agitation that industrial tribunals, unfettered by the fear of correction in appeal, had given uncoordinated, and sometimes even whimsical, awards, the Government felt that an Appellate Tribunal was necessary. In the Statement of Objects and Reasons attached to the Industrial Disputes (Appellate Tribunal) Act, 1950 the Labour Minister said that some tribunals had been known to take divergent views on important issues such as profit-sharing and retirement benefits and that industrial undertakings with branches in more than one

province had to face anomalies and complications arising out of the varying decisions of tribunals in different provinces. Within a couple of years of the commencement of the functioning of the Appellate Tribunal an agitation was started by workers' organizations for the abolition of the Appellate Tribunal, mainly on the ground that appeals led to inordinate delays and that justice delayed was justice denied, with consequences far more serious in the field of industrial relations than in any other field of human activity. The workers argued, for instance, that if wages appropriate to the conditions obtaining in 1950 were, because of the prolonged litigation, to be secured only in 1955, by which time conditions would have greatly changed, there would be no satisfaction even in securing a favourable verdict at the end of the litigation. Such delays produced great frustration among workers and produced more disputes than they solved.

The Appellate Tribunal was abolished by the Amendment Act of 1956. The Statement of Objects and Reasons appended to the Bill said that this was necessitated because of criticisms that appeals before the Appellate Tribunal took a long time for disposal and involved a great deal of expenditure which the workers could not afford. The main purpose of the Appellate Tribunal, namely, coordination and high level decision, was sought to be preserved by the replacement of the existing machinery for adjudication by a three-tier system of tribunals, namely, the labour court, the industrial tribunal and the national tribunal.

It is true that appeals had taken time, though delays were gradually being reduced by the appointment of more and more benches of the Appellate Tribunal. It is also a fact that appeals had proved somewhat expensive for workers. But it is open to conjecture whether these difficulties had not been somewhat exaggerated and whether at the bottom of the workers' agitation for the abolition of the Appellate Tribunal was not their feeling that certain important appeals had gone against them in substance. It was, however, soon realized that the abolition of the Appellate Tribunal had not been an unmixed blessing. Attention was drawn to this by the Law Commission which quoted figures to show that against 23, 21 and 37 appeals admitted by special leave in the Supreme Court in 1953, 1954 and 1955, the years immediately preceding the repeal of the Appellate Tribunal Act, the number of appeals so admitted in 1956 was 257 and in the first ten months of 1957, 148. 209 appeals were pending in the Supreme Court and 756 writ petitions in High Courts on 30 November 1958. Reviewing these figures the Law Commission observed as follows:

"The situation created by these large numbers of appeals causes concern in two respects. It has the natural effect of clogging the work of the Supreme Court.... The graver aspect, however, of the matter is that labour matters are being thrust upon a Court which has not the means or materials for adequately informing itself about the different aspects of

the questions which arise in these appeals and, therefore, finds it difficult to do adequate justice.... Equally grave are the delays caused by these appeals in the disposal of industrial matters which essentially need speedy disposal."

The Commission proceeded to observe that the remedy lay in providing for an adequate right of appeal in industrial matters and that "such a right of appeal could be provided either by constituting tribunals of appeal under the labour legislation itself or by conferring a right of appeal to the High Court in suitable cases."

The recommendations of the Law Commission were placed before the 17th Session of the Indian Labour Conference held in July 1959. The Conference did not come to any definite conclusions and suggested that a number of proposals made at the conference should be got examined, such as that the Supreme Court should set up a Special Bench to hear appeals, that the powers of the Supreme Court to hear appeals be restricted to those involving important legal questions or to those that might lead to grave injustices, that High Courts be empowered to hear appeals, that the Labour Appellate Tribunal be revived, etc. The matter was again placed before the Standing Labour Committee of the Conference held in January 1960. Opinion was again found to be divided on the question whether the Labour Appellate Tribunal should be revived or not. The matter was postponed for further consideration in consultation with State Governments.

A system of adjustment of industrial relations which provides for compulsory adjudication as its backbone must necessarily provide for appeal. This is all the more necessary because of the provisions in the Constitution which permit appeal by special leave to the Supreme Court and applications for writs before High Courts. The power of High Courts to grant relief is limited. A High Court can only quash an order of a tribunal, but cannot make its own decision and substitute it for that of the tribunal. For positive relief, therefore, the aggrieved party is forced to go to the Supreme Court—a step which is both costly and protracted. On the other hand, if provision is made for appeal to a suitable authority, the Supreme Court is always very reluctant to interfere except to remedy a gross miscarriage of justice.

It is somewhat surprising that the need to provide for appeals has not been finally recognized in the sphere of industrial disputes. A company which has to recover, or is called upon to pay, a few thousand rupees can, if dissatisfied with the original decree, file appeals, and often it may have more than one remedy. But if the same company is called upon to pay out several lakhs of rupees as, say, bonus or to bear an additional annual burden of several lakhs of rupees by way of enhanced wages—a burden that might bring a flourishing concern to the verge of bankruptcy—it would find itself without any means even to file one appeal. While labour must, no doubt, get all that is due to it, the employer too must have his remedies against unbearable impositions.

The Giri Approach: When Shri V. V. Giri took over as the Labour Minister of the Government of India in the middle of 1952, he was far from pleased with the prevailing outlook on industrial relations in the country. He publicly gave expression to his firmly held conviction that internal settlement of disputes was eminently preferable to compulsion from outside and that collective bargaining and voluntary arbitration should be encouraged in preference to compulsory arbitration or adjudication. He then toured all over the country ascertaining the views of all parties interested in the subject of industrial relations and propagating his own views in the matter. Soon after he took over as Labour Minister, he got a detailed questionnaire on industrial relations issued with a view to eliciting public opinion on the major issues pertaining to industrial relations. It was divided into 20 parts including one on trade unions and consisted in all of 115 questions. A brief summary of the opinions furnished by the major employers' and workers' organizations on the basic policy underlying industrial relations is given in the paragraphs below.

On the most vital question whether voluntary methods or compulsion should be employed in the settlement of industrial disputes, views were asked for on three possible alternative methods, viz.,

(*i*) The parties should be left to settle all disputes and differences by negotiation and collective bargaining among themselves without the intervention of the State except to the very limited extent of providing a machinery for voluntary conciliation or arbitration,

(*ii*) The State should take an active role in the settlement of disputes by making both conciliation and arbitration compulsory in the event of the failure of negotiations and by reserving to itself the power to refer disputes for compulsory arbitration, and

(*iii*) The law should put restraints and restrictions on the freedom of the parties in the earlier stages of a dispute by making notice of change of conditions and of strikes or lock-outs obligatory, by making conciliation compulsory and by prohibiting strikes or lock-outs for defined periods, but it should place no ultimate restrictions on the freedom of the parties to resort to direct action and should not make arbitration compulsory.

The Indian National Trade Union Congress, while supporting negotiations, collective bargaining and voluntary arbitration, was of the view that "arbitration may have to be made compulsory in certain cases in spite of the wishes of the parties in cases where Government in their discretion consider it to be a proper case for intervention in the interest of the community or maintenance of peace or other reasons." It added that "trade unions which provide for arbitration in their constitution should be provided with facilities of automatic reference to arbitration by law even though the other party may

not be willing." The Indian National Trade Union Congress quoted with approval the conclusions arrived at in the Industries Development Committee, viz., that in an economy organized on the basis of competition, private monopoly, or private profit, the workers' right to have recourse to peaceful direct action for the defence of their rights and the improvement of their conditions cannot be denied but that "in an economy which is organized for planned production and distribution, aiming at the realization of social justice and the welfare of the masses, strikes and lock-outs have no place." Consequently it was incumbent on the State to arm itself with legal powers to make reference of disputes for settlement by arbitration or adjudication on failure of efforts to reach an agreement by other means.

The All India Trade Union Congress would not agree that the country was moving towards a "planned economy." It was still an unplanned economy where "Governments and industrialists always sit together and 'plan' certain developments, executed by huge cartels or syndicates with Government participation." The unplanned character of such developments was "distinguished from the planned economy by the fact that the main volume of production is carried out on the basis of private profit, the anarchy of the market prices and their ruinous hold over people's consumption, by the absence of the control of the workers' and peasants' organizations over the main means of production and distribution and over the State which is the main directive agency of the planned economy." The All India Trade Union Congress said that it disapproved not only of compulsory arbitration but the suggestion that everything be left to the contending parties without any such intervention. In its opinion, if an economy was to be planned, "every unit of production must be guided, checked, controlled, criticized and encouraged by a joint organization of the management and elected workers' committees led by the trade unions of the industry." The State must legislate for compulsory recognition of unions and collective bargaining in all fields where employer-employee relations existed.

The Hind Mazdoor Sabha too was in favour of compulsory arbitration. It said that "Government must refer the dispute to adjudication when either of the two parties, viz., the employers and workers, desires that the dispute should be referred to adjudication." Presumably according to this view, Government would not be entitled to intervene if neither party desired such intervention. Government could not, for instance, order adjudication on the ground that a dispute which was being fought out between the parties was injurious to the economy of the country.

The United Trade Union Congress said that "under the existing objective conditions where the employers generally look down upon the workers as an inferior species of human beings and where the workers do not enjoy a status of equality with the employers, the active intervention of the State by making both conciliation and arbitration compulsory is necessary."

The Employers' Federation of India, which is the largest of the employers'

organizations, said: "Compulsory arbitration or adjudication, as it is now popularly known, is basically wrong in principle. Experience of the working of the existing Act has confirmed this view. It is, therefore, imperative that the new legislation should avoid the provision for compulsory arbitration except in rare cases of emergency." The Federation went on to say that collective bargaining would be a success only if there was a well-organized trade union movement and that the hopes which had been entertained when the present labour laws were enacted that there would be a progressive tendency for trade unions to grow in strength and take the place of bargaining agents had not materialized. "The provision for compulsory adjudication has positively put an end to all incentives for settling differences by the normal process of collective bargaining. Even the initial process of conciliation has proved a farce. Under the existing legislation, conciliation has, from the workers' point of view, come to be the first stage in securing an instalment of concessions which is to be used as the 'jumping off' ground at the final stage of adjudication. It is but natural that employers, under such an arrangement, would not disclose their mind till the adjudication stage is reached. Experience has thus shown that the process of conciliation will serve no purpose when compulsory adjudication is to follow."

The All India Organization of Industrial Employers welcomed the new policy of the Labour Minister and agreed "that in the long run industrial relations should be based on mutual confidence and friendliness between management and labour and not on the terms dictated to both of them by a third party." However, the organization felt that in the existing state of industrial relations in the country, governed by compulsory adjudication and characterized by the absence of healthy trade unionism, it was not feasible to do away completely with compulsory adjudication. So the Organization suggested that while the legislation should encourage the parties to settle disputes and differences by negotiation and collective bargaining among themselves, it should also provide for compulsory adjudication. In spite of this conclusion the Organization was of the view that "if anything has been responsible for widening the gulf between employers and workers, it is the machinery of compulsory arbitration."

The All India Manufacturers' Organization supported compulsory arbitration though it said that this should be restricted to certain categories of disputes or subjects.

It will be seen from this summary that barring the All India Trade Union Congress and the Employers' Federation of India, none of the other employers' and workers' organizations was really in favour of discontinuing compulsory arbitration. Most of the State Governments also were opposed to the giving up of compulsory arbitration.

At the 12th Session of the Indian Labour Conference at which the replies to the questionnaire and the whole subject of industrial relations was discussed

at length, the Labour Minister, Shri V. V. Giri, argued his point of view in the following manner:

"(1) Those of you who have been following my speeches during the last three or four months must have discovered in them my basic theme on the subject of industrial relations, viz., that it is far better for management and labour to settle their differences amongst themselves than for them to go as litigants and opponents before a labour tribunal or court. I am afraid I cannot conceal my disappointment at the thought that the principle of compulsory arbitration, introduced for the first time as a result of war-time exigencies and continued thereafter as a measure inevitable in a period of economic uncertainty and emergency, has given a great setback to the growth of trade unionism in the country. The spirit of self-confidence and self-reliance engendered by healthy bargaining has given place to the habit of importunity and litigation. That is bad enough, but what is worse is the deplorable effect that this dependence on a third party has brought about in the outlook and attitude of the parties towards each other. In a system of straight-forward bargaining there is no doubt a keen struggle during the period of negotiation, but except in the few cases that lead to a strike or lock-out, the parties conclude their bargaining in a spirit of give and take—in an atmosphere of goodwill and understanding. Neither party entertains any sense of humiliation or feels the urge for retaliation and revenge. But that is not the case with compulsory arbitration. Where one party has lost and the other won, the victor and the vanquished get back to their work in a sullen and resentful mood towards each other; and neither can forget or forgive. The loser awaits the next opportunity to make good the loss, while the winner is carried away by a sense of victory which is not conducive to cooperation. Such an attitude of suppressed hostility in one party and of unconcealed satisfaction and triumph in the other may lead to transient truce but not lasting peace.

(2) But that is not all either. Compulsory arbitration has cut at the very root of trade union organization. Unity among men, particularly trade unionists, is the direct outcome of necessity. If workers find that their interests are best promoted only by combining, no greater urge is needed to forge a bond of strength and unity among them. But compulsory arbitration sees to it that such a bond is not forged. It stands there as a policeman looking out for signs of discontent and at the slightest provocation takes the parties to the court for a dose of costly and not wholly-satisfying justice. The moment the back of the policeman is turned, the parties grow red in the face with redoubled determination, and the whole cycle of litigation starts all over again, with the proverbial law's delays and continued rancour and

bitterness. Let trade unions become strong and self-reliant and learn to get on without the assistance of the policeman. They will then know how to organize themselves and to get what they want through their own strength and resources. That will also be the means of their achieving greater self-respect. It may be that until the parties have learnt the technique of collective bargaining, there are some unnecessary trials of strength, but whoever has heard of a man learning to swim without having to drink some gulps of water?

(3) It has, therefore, been my firm conviction all these years that internal settlement of disputes is eminently to be preferred to compulsion from outside and that collective bargaining and voluntary arbitration should be encouraged in preference to compulsory arbitration. Compulsion may be inevitable during war or in times of emergencies, but it is as inappropriate in peace as drugging is in health. The country has had compulsory arbitration for full six years after the war and, I feel, has already grown weary of it. Wherever I went during my recent visits, workers and employers were unanimous in their condemnation of the litigious spirit it has engendered and in their demand that the time had come for turning a new leaf in the chapter of industrial relations.

(4) The basic policy. If the Conference feels that we should give an earnest trial to the policy of internal settlement of industrial disputes, we must free the parties of the shackles of compulsory arbitration, restore to them their sense of self-confidence and responsibility, and inculcate in them the spirit of self-government. While I have no doubt that such a policy will, in the long run, pay full dividends in all sectors of industry and in all walks of employment, I would, in view of the opinions mentioned above, hasten slow and take no undue risks in the early stages. I am, therefore, placing before you a possible line of action for your consideration. All industries and employments—barring such as we decide to exclude—should be divided into two categories, viz., public utility services and non-public utility services. Public utility services should include all industries and employments traditionally classified as such, namely, power, light, water, conservancy, sanitation, railways, posts and telegraphs, etc. They should also include, in view of the present economic position of the country, such other industries and employment as may be considered necessary for maintaining supplies and services essential to the life of the community. It is for the Conference to consider how the term "public utility service" should be defined. Strikes and lock-outs in public utility services cause immediate and acute suffering to the public and until employers and workers have built up a tradition of forbearance, restraint and responsibility, Government may have to step in in the interests of the public. In these cases Government should have the power to refer all unresolved disputes for compulsory arbitration and simultaneously to prohibit strikes and

lock-outs. In the case of non-public utility services, which will account for the bulk of industrial and commercial activity, it should be permissible to give full scope for collective bargaining. In those cases there will be no compulsory arbitration, and the parties will be encouraged to rely largely on mutual negotiations and to resort, by mutual agreement, to voluntary conciliation and arbitration. While the State will assist in the evolution of adequate machinery for negotiation, conciliation and arbitration, the parties will be encouraged to devise, through mutual consent, their own machinery for any, or all, of these purposes. If the experiment of internal settlement of disputes through voluntary conciliation and arbitration succeeds in the case of non-public utility services, the time will come, perhaps sooner than most of us would now dare to expect or predict, when the same method of settlement of disputes could profitably, and with no risk to the public, be extended to public utility services also."

The Labour Minister also suggested that if an emergency arose which threatened prolonged and widespread hardship to the community or some other grave or irremediable consequences, it would certainly be proper for the State to have recourse to special legislation to meet the emergency.

On other matters of detail also the Labour Minister made a number of suggestions calculated to simplifying procedures and to leaving responsibility and initiative in the hands of the parties. Thus out of the 9 authorities suggested in the Labour Relations Bill, he recommended the abolition of as many as 5, viz., registering officers, standing conciliation boards, commissions of inquiry, labour courts and the Appellate Tribunal. Only the remaining 4 were to be retained, viz., works committees, conciliation officers, boards of conciliation and industrial tribunals.

The discussions that followed at the 12th Session of the Indian Labour Conference showed that few persons were prepared to chalk out a new policy in the matter of industrial relations. The existing situation was admittedly not very satisfactory, but there was no knowing whether an entirely new one was likely to prove more satisfactory or whether it might not after all lead to further complications. While there was much lip sympathy for the policy of mutual negotiations and collective bargaining, there was really no support for the bold line of action advocated by Shri Giri. Summarising the deliberations of the Conference, the Labour Minister said that "the majority are of the view that greater emphasis on mutual settlement is itself likely to produce quite satisfactory results and that it would be too risky for Governments to divest themselves of authority to step in with compulsory adjudication when all other methods of settlement have failed. The consensus of opinion is that reference of a dispute for compulsory adjudication should be the last resort and that it should be made only in exceptional circumstances." He said that he himself was inclined to take some risks and to try out the

new experiment but that he realized the attitude of those who preferred a cautious approach in the matter. He added that "a leap in the dark, as the protagonists of compulsory adjudication would consider its abolition, is often a frightening experience, and while, in my opinion, risks have sometimes to be taken if the ultimate goal is to be achieved, I cannot blame those who would prefer to postpone the ordeal as long as possible and until they are better prepared for it." Refuting the suggestion put forward by various speakers that the growth of membership was indicative of the strength of the trade union movement, Shri Giri said that the strength of a trade union lay in its bargaining power and not in mere numbers. "Can it be said," he asked, "that workers are more self-reliant today than they were 10 or 15 years ago or that they do not lean more heavily on external assistance today than they did some years ago?"

The Giri approach thus foundered on the bed-rock of fear and conservatism. If all the trade union organizations had been of one view, the new experiment could have been tried out at least in a limited field, but the majority of them proved incapable of realizing the true nature of their plight. That they should have pinned their faith on compulsory adjudication was itself a clear confession of their weakness and their inability to stand on their own legs. Compulsory adjudication had come in as a boon to weak unions which now required only one or two loud mouths to go and harangue the Government authorities in charge of ordering adjudication. Then some limited results would follow in due course, and the trade union rank and file would be kept contented for a while. One cannot blame State Governments for adopting the cautious approach of sticking to the *status quo*. While, no doubt, they have some responsibility for helping to build up the trade union movement, they have a far greater responsibility for preserving industrial peace, especially at a time of national development. However, it is clear that they were not prepared to experiment with new ideas and that they preferred safety to progress. It is a great pity that the opportunity afforded by the Labour Minister's enthusiasm was not availed of by the parties for a reorientation of policy which might have led to the building up of a strong trade union movement.

The First Five Year Plan: The State policy in respect of industrial relations embodied in the First Five Year Plan can be gathered from the following extracts:

> "In an economy organized on the basis of competition, private monopoly or private profit, the workers' right to have recourse to peaceful direct action for the defence of their rights and the improvement of their conditions cannot be denied and should not be curtailed unduly. It is generally accepted, however, that in an emergency and in the case of services essential to the safety and well-being of the community, recourse to a strike

> or lock-out may be suspended or withheld on the condition that in all such cases provision is made for a just settlement of the parties' claim . . . . In normal times and in ordinary cases whether the right to strike or lock-out should be circumscribed is an open question. An economy organized for planned production and distribution, aiming at the realization of social justice and the welfare of the masses, can function effectively only in an atmosphere of industrial peace. India is moving in this direction. It is also at present passing through a period of economic and political emergency. Taking the period of the next few years, the regulation of industrial relations in the country has to be based on these two considerations and it is incumbent on the State to arm itself with legal powers to refer disputes for settlement by arbitration or adjudication on failure of efforts to reach an agreement by other means."

Having established the case for compulsory arbitration from the point of view of the requirements of planning and of meeting emergency conditions, the Plan stated that State intervention was necessary also because of the lack of bargaining power of unions. Experience had demonstrated that in the majority of labour struggles, owing to the ignorance and the mistakes of the workers and their organizational and bargaining weakness, workers had failed to gain their ends irrespective of the merits of the disputes. "The community has, therefore, to intervene for redressing the balance in favour of the weaker party to assure just treatment for all concerned."

After making sure that the State had ample powers to prevent loss of production through industrial strife, the Plan proceeded to emphasize various principles of labour-management relations generally accepted as being part and parcel of the democratic way of life. The endeavour of the State, the Plan said, had all along to be to encourage mutual settlement, collective bargaining and voluntary arbitration to the utmost extent and thereby to reduce to the minimum occasions for its intervention in industrial disputes and the exercise of the special powers. There should be the closest possible collaboration, through consultative committees at all levels, between employers and employees for the purpose of increasing production, improving quality, reducing costs and eliminating waste. A number of suggestions were made for avoidance of disputes and for internal settlement and collective bargaining. The Plan laid emphasis on standing orders, works committees and joint committees. "Works committees for the settlement of differences on the spot between the workers and the management is the key of the system of industrial relations as conceived in this Plan." The works committees and joint committees, the Plan said, would be the best vehicle for improving labour relations and promoting employer-employee collaboration in the interests of higher production and greater well-being of the workers through the progress of industry. Emphasis was also laid on conciliation and voluntary arbitration, and every effort was to be made to encourage the parties to bind them-

selves in advance to submit to arbitration every industrial dispute in which a settlement was not reached by conciliation. The Plan said "that the most honourable and patriotic course for employers and employees would be to agree to submit any present or future dispute or classes of such disputes to arbitration of any person or board of their choice. The number of such agreements would be a good index of real progress in industrial relations in the country."

While collective bargaining could, in the opinion of the Plan, derive reality only from the organized strength of workers and a genuine desire on the part of the employers to cooperate with their representatives in exploring every possibility of reaching a settlement, a legal framework was necessary to determine the appropriate bargaining agency and to fix the responsibility for the enforcement of collective agreements. There should, therefore, be a single bargaining agent over as large an area of industry as possible and uniform conditions should be secured in at least all the establishments in one centre. Where no trade union had built up the requisite strength to obtain a representative character, the largest union should have the right to function in respect of all establishments in which it had a majority of the workers as its members. Separate unions for industrial establishments in the same industry in a local area were inimical to the growth of a strong and healthy trade union.

Apart from the recommendations made for the maintenance of peaceful industrial relations in the private sector, the Plan proceeded to make certain specific observations in regard to industrial relations in the public sector. A worker in a public undertaking had the dual role of master and servant: master as a citizen of the country and servant as a worker of the undertaking. He should, therefore, be made conscious that in serving the undertaking, he was serving himself and that the better he worked and the greater his efficiency, the better he would serve and help himself. Nevertheless the Plan said that wages in public undertakings should not be less favourable than those prevailing in the neighbouring private enterprises and that the benefit of all labour laws should be made available to workers in the public sector. More specifically the Plan said that the board of directors of a public undertaking should have on it a few persons who could understand labour problems and that there should be progressive participation of labour in many matters of the undertaking. Thus labour participation in management was envisaged in undertakings in the public sector in the First Plan itself. This was subsequently to become an important feature of the Second Plan.

Effective implementation of the Five Year Plan was mentioned as one of the most important responsibilities of trade unions. The Plan said that the important central organizations of workers and the employers' associations should be persuaded to treat the period of execution of the Plan as a period of national emergency. As a measure for meeting this emergency, the need for maintaining peace in industry and for avoiding interruption of

work during the period of the Plan was said to be obvious.

The substance of the State policy in the matter of industrial relations was, therefore, that the parties were to be encouraged to settle differences among themselves and to utilize various types of machinery which would facilitate the process of mutual consultation and negotiation. Failing agreement between the parties, disputes were to be referred, if possible, for voluntary arbitration and, if need be, to industrial tribunals for compulsory adjudication. Broadly speaking, therefore, the State was not prepared to agree to a situation in which strikes and lock-outs would do any appreciable damage to the productive capacity of the country. Other considerations such as, for instance, the need to develop strong trade unions and to educate them to become responsible and self-reliant were, no doubt, important but were not of any over-riding priority, at any rate, for the duration of the Plan.

The Second Five Year Plan: The basic principles of the First Plan were considered to hold good for the Second Plan also. In other words, there was to be no radical departure from the policies enunciated in the First Plan. Referring to the trade union movement, the Second Plan said that "multiplicity of trade unions, political rivalries, lack of resources and disunity in the ranks of workers were some of the major weaknesses in a number of existing unions." The argument that unions were weak and divided because of their dependence on outsiders was examined, and though it was found to be not entirely without foundation, it was not considered to be a major inhibiting factor. On the other hand the part played by outsiders was extolled. Making a distinction between outsiders who were whole-time trade union workers and those who looked upon union work only as a part of their activities, the Plan said that there was still need for devoted workers of the first kind in trade union organizations. The Plan added that recently the number of outsiders managing trade unions had shown a decline. While this might have been true of the number of outsiders attached to particular unions or of the average number of outsiders per union, it is doubtful whether in the movement as a whole the number of outsiders has gone down. The total number of trade unions has increased very considerably in recent years and as most of them have one or more outsiders on their executives, it is hard to believe that the total number of outsiders interesting themselves in trade union work has shown any tendency to decline. The Plan drew attention to other problems connected with trade unions such as the need to recognize representative unions and the urgency to improve trade union finances. Statutory provision for securing recognition of unions was to be made keeping in view the importance of recognizing only one union for an industry in a local area.

The Second Plan too laid emphasis on mutual negotiations, agreements and voluntary arbitration. Quoting a couple of instances of agreements entered into between employers and workers, the Plan said that "recently there have been some healthy developments in this direction and agreements have been

reached on a number of seriously disputed issues." The Plan did not consider whether the time was at all ripe for reducing the area of compulsory arbitration. Nevertheless it said that "in intractable cases recourse to Government intervention was unavoidable." Thus there was nothing new in the basic approach of the Government to the principles relating to industrial relations.

Regarding measures to avoid disputes, emphasis was to continue to be placed on joint consultative machinery such as works committees, the Joint Consultative Board and joint management councils. New stress was laid on increased association of labour with management. Such a measure, the Plan said, would help in (*a*) promoting increased productivity for the general benefit of all parties concerned, (*b*) giving employees a better understanding of their role in the working of industry and of the process of production, and (*c*) satisfying the workers' urge for self expression, thus leading to industrial peace, better relations and increased cooperation.

The problem of industrial relations in the public sector received only very brief mention. Managements of public undertakings should not normally seek exemptions from labour laws or ask for other concessions not available to the private sector. The Plan said that "in the last analysis employees in the public sector should on the whole be at least on par with their counterparts in private employment."

The Third Five Year Plan:[1] After saying that the State has, over a decade, taken upon itself the responsibility of providing facilities for promoting amicable settlement of industrial disputes and that it has assumed powers of intervention for the purpose of maintaining industrial peace, the Plan says that "the feeling has grown that while Government intervention is unavoidable to a certain extent, in the present circumstances, real progress lies in the development of cooperative arrangements evolved by the parties themselves in response to the needs of changing situations." The Plan then proceeds to indicate the directions in which cooperative arrangements are considered necessary and possible. It does not say, however, whether the organization of trade unions and the relationship between employers and workers at the present time are such as to be conducive to the development of cooperation between the parties.

The Plan then refers to a few recent developments which it describes as of outstanding importance and as providing "the main content and direction of what needs to be done in regard to labour under the Third Plan." The recent developments referred to are the Code of Discipline in industry, the Code of Conduct and the machinery for implementation and evaluation. Referring to the Code of Discipline, the Plan says that it "lays down specific obligations for the management and the workers, with the object of promoting constructive

[1] This section was written on the basis of the draft of the Third Plan as then available. The Final Plan has undergone some verbal changes, but the substance remains the same.

cooperation between their representatives at all levels, avoiding stoppages as well as litigation, securing settlement of disputes and grievances by mutual negotiation, conciliation and voluntary arbitration, facilitating the free growth of trade unions, discouraging careless operation or negligence of duty on the part of the worker, and eliminating all forms of coercion and violence in industrial relations." The Plan is cautious enough to say that a new concept of such a far-reaching nature "will require a considerable period of earnest endeavour before it gets firmly established in practice." Referring to the Code of Conduct as between rival trade unions, it says that the Code has mitigated the evils of rivalry "to some extent."

The rest of the Plan deals with such matters of detail as workers' education, voluntary arbitration, works committees, grievance procedures, labour participation in management, minimum wages, etc.

The Government's labour policy, as revealed in the Plans, has obviously been evolved with an eye largely to the successful completion of the various Five Year Plans. That policy is nothing more than broad generalizations in regard to many labour matters. The Plans discourage any attempt on the part of the workers to enforce their demands through direct action. Beyond this there is little of positive guidance in the policy. The policy is at times a mere expression of pious hopes; sometimes an announcement of good intentions. There is no firm policy in respect of the known weaknesses of the trade union movement and in regard to the development of a sound system of labour-management relations. Is the development of a strong trade union movement an important aspect of Government's labour policy? If so, what active steps should be taken to neutralize the forces that are known to contribute to the weaknesses of the movement and to ensure that trade unionism builds itself up on sound and strong lines? If the Wagner Act was responsible for the large-scale expansion and strengthening of the trade union movement in the United States, do we have any proposals that might lead to similar results? Does the Government believe in compulsory adjudication or in collective bargaining? It cannot, or should not, believe in both as the two are mutually incompatible. On wages, bonus and similar financial factors affecting the labour-management relationship, there is hardly any attempt at reconciling the expectations of labour with those of other interested parties, such as management or the investing public, or with the requirements of a planned economy. On some of these matters, more will be said in the last chapter. The impact of the labour policy, such as it is, is wholly uneven in regard to different sections of labour. Between the industrial labour of the big cities, which constitutes the most pampered and the most highly-paid section of labour, and the agricultural labour of the rural areas, which constitutes the most neglected and the least-remunerated of all labour in India, there are numerous echelons of labour sections which suffer from different degrees of neglect at the hands of the State's labour policy. In general it may be safe to say

that the Government's attentions to different sections of labour—industrial, semi-urban, rural and purely agricultural—are in direct proportion to the amount of trouble and worry that labour can give to the Government. That accounts for the fact that agricultural labour, which is phenomenally dumb and helpless, derives the least measure of support and assistance from the Government.

The Three Codes: As already mentioned, the draft of the Third Five Year Plan referred to the three Codes and the machinery for observing their implementation as the "few recent developments of outstanding importance which provide the main content and direction of what needs to be done with regard to labour under the Third Plan." This excessive emphasis on the importance of the Codes appears to have been given up at the stage of giving final touches to the Third Plan. Nevertheless if the Codes are, in the opinion of Government, so important as in fact to form the life and soul of the Third Plan, they obviously merit some detailed examination.

The Code of Discipline: The Code of Discipline was evolved in broad outline at the 15th Indian Labour Conference held in 1957 and was scrutinized later on by a Subcommittee on Worker Participation in Management and Discipline in Industry. It was ratified at a meeting of the Subcommittee held on 14 and 15 March 1958 and was finally adopted at the 16th Session of the Indian Labour Conference held in 1958. It came into force on 1 July 1958.

The Code is a compendium of obligations of managements and unions. These obligations are broadly in three parts; the first part binds both managements and unions, the second only managements and the third only unions. The obligations applicable to both parties say, for instance, that no unilateral action should be taken in connection with any industrial matter, that the existing machinery for settlement of disputes should be utilized with the utmost expedition, that there should be no strike or lock-out without notice, that the parties bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration, that neither party will have recourse to coercion, intimidation, victimization and go-slow, that the parties will avoid litigation, sit-down and stay-in strikes, and lock-outs, that they will promote constructive cooperation between their representatives at all levels, etc. Managements agree not to increase workloads unless agreed upon or settled otherwise, not to support or encourage any unfair labour practice, to take prompt action for settlement of grievances and implementation of settlements, awards, decisions and orders, to distinguish between actions justifying immediate discharge and those where discharge must be preceded by warning, reprimand, suspension, etc. Unions in turn agree not to engage in any form of physical duress, not to permit any demonstrations which are not peaceful and not to permit rowdyism in demonstrations, to discourage unfair labour practices, to take prompt action to implement

awards and agreements, to take appropriate action against office-bearers and members for indulging in action against the spirit of the Code, etc.

It will be seen from this narration of responsibilities that the Code is nothing but a list of obligations that already rest, and have always rested, on the parties for the due observance of the laws and conventions pertaining to industrial relations, though these are now to be carried out in a manner mutually agreed upon by all concerned as just and reasonable. Very few fresh obligations, not hitherto acknowledged as forming part of good practice and conduct, have been assumed by the parties. The agreement, for instance, that there should be no strike or lock-out without notice contains really nothing new even if prior notice is not required under the law in respect of disputes in non-public utility services. The giving of prior notice has always been considered to be good practice in the adjustment of industrial relations and is not a new obligation. The clause which says that the parties bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration also does not contain anything startlingly new though it involves a new determination to put aside the weapon of strikes and lock-outs for settling differences. All the central organizations of employers and workers are parties to the Code and theoretically, therefore, there should be no compulsory adjudication whatsoever in the bulk of the field of industrial relations controlled by the central organizations. If then compulsory adjudication continues to hold the field, it can only mean that translation of the agreement into practice has not been easy. Moreover, if all future differences are going to be settled by mutual negotiation, conciliation and voluntary arbitration, there should be no occasion at all for any strikes. Here too practice appears to have proved more difficult than precept.

The official report on the working of the Ministry of Labour and Employment for 1959-60 says that the Code worked well during the 18 months ending December 1959 and that out of 777 cases reported of breaches of the Code, 226 did not require any action, 180 were transferred to State Governments and of the balance of 371 cases, those settled or those in which breaches were brought home to erring parties were 242 or 65 per cent of those that needed attention. The report adds that "no further interpretation of these statistics is called for."

The significance of these figures is, by no means, clear. The drawing of the attention of the parties to the breaches committed by them, while necessary, will have only a limited moral value but no more. If central organizations take positive action including eventual disaffiliation and if such action results in reducing breaches, that will be something worth while. A study of such action would obviously be needed in any assessment of the effectiveness of the working of the Codes.

The standing Labour Committee at its 16th Session held in October 1957 recommended that the central organizations of employers and workers enforce

the following sanctions against their constituent units guilty of breaches of the Code of Discipline, viz.:

(*i*) to ask the unit to explain the infringement of the Code;
(*ii*) to give notice to the unit to set right the infringement within a specified period;
(*iii*) to warn and in serious cases to censure the unit concerned for its actions constituting the infringement;
(*iv*) to impose on the unit any other penalties open to the organization;
(*v*) to disaffiliate the unit from its membership in case of persistent violation of the Code; and
(*vi*) not to give countenance in any other manner to non-members who did not observe the Code.

Later on the 17th Session of the Indian Labour Conference held in July 1959 recommended the following additional sanctions, viz.,

(*i*) failure to observe the Code would entail de-recognition normally for a period of one year; and
(*ii*) a dispute may not ordinarily be referred for adjudication if there is a strike or lock-out without proper notice or in breach of the Code as determined by an implementation machinery unless the strike or lock-out is called off.

Suggestions were later on made to the effect that employers or unions refusing to accept the Code might be denied the benefits of recognition and that Government might, unless it was compulsory under the law, withhold assistance from recalcitrant unions and employers in the settlement of disputes.

If Government withholds assistance under the Industrial Disputes Act, it can hardly be claimed that the Code is a voluntary measure. Moreover it is open to doubt whether legally Government can, in the exercise of discretion under the Industrial Disputes Act, impose extraneous, even if well-meant, considerations which are not strictly in accordance with the letter of the law.

In a report placed before the Subcommittee on Workers' Participation in Management and Discipline in Industry on 8 December 1959, the Government pointed out that the number of man-days lost had declined since 1 June 1958 when the Code was finally brought into force. For instance, as against a total of 4,701,136 man-days lost in the half year January to June 1958, the number of man-days lost in the next two half years was 3,096,349 and 2,355,056. The reduction was attributed to the Code. Any inference from the statistics of two or three half years would be clearly inappropriate. As the statistics quoted in earlier sections show, wide fluctuations are possible from year to year even in the absence of any special circumstances. Moreover, after the termination of a prolonged strike, the number of man-days lost goes down appreciably until another important strike takes place. The half year

January to June 1958 witnessed some important strikes including the one in the Tata Iron and Steel Company. The number of man-days lost naturally went down immediately afterwards. But it has again gone up appreciably with the Central Government Employees' strike in July 1960. Inferences based on man-days lost can be useful only if they are based on the trend for a fairly long period. Recent events have confirmed the validity of these conclusions drawn as early as 1961. At a Seminar on the Code of Discipline held in August 1965, the Labour Minister admitted that the number of man-days lost had risen to 7.7 million in 1964 as against 3.27 million in 1963 and 6.12 million in 1962. He attributed the rise to various causes such as a steep rise in the prices of foodgrains, delay in the implementation of the recommendations of the Bonus Commission, etc., but he seemed apparently to be reconciled to the ineffectiveness of the Code in such situations.

The Code of Conduct: This Code drawn up at a meeting of the four central organizations of labour held at Nainital on 21 May 1958 has, as its object, the maintenance of harmonious inter-union relations. It is a mere collection of generalizations. It says, for instance, that every employee in an industry or unit shall have freedom and right to join a union of his choice, that no coercion shall be exercised, that there shall be no dual membership of unions, that there shall be unreserved acceptance of, and respect for, the democratic functioning of trade unions, that there shall be regular and democratic elections of executives and office-bearers of trade unions, that the ignorance and backwardness of workers shall not be exploited, that there shall be no violence, coercion, intimidation or personal vilification in inter-union dealings, etc. It is claimed that this Code has proved a success inasmuch as in about 53 per cent of the complaints breaches of the Code were brought home to the respective unions. The test of success of this Code is even more vague and uncertain than that of the Code of Discipline. Here there is not even a measurable criterion such as the number of man-days lost—imperfect though the latter criterion might well be—for deciding whether the Code is producing any results. A code such as this may have some effect if violent methods are adopted by one union against another, but that is not the worst consequence of inter-union rivalry. Inter-union rivalry has, as its object, the winning over of the membership of one union by another by means fair or foul. The more subtle the rivalry, the more effective it often is. If four central organizations, with four sets of supporting unions in the field, have to exist—and that is what the Code is trying to perpetuate by creating conditions favourable for peaceful co-existence—they must necessarily fight, though not physically, for their existence. That fight will inevitably go on even if an otherwise hot war might now turn into a cold war. The only way to avoid a divided trade union movement is to make conditions difficult for the continued existence of four sets of trade unions. In other countries, this has been achieved by giving overwhelming support to the principle of the representative union. There are

various ways in which representative unions maintain their supremacy apart from their having exclusive bargaining rights. They often demand practices such as the closed shop, the union shop, check off, etc., which have the effect of building up representative unions at the cost of weaker rivals. To these practices, the opinion in India is largely unfavourable, probably because of the fear that a number of the existing central organizations and unions might have to disappear in the bargain.

The Code of Efficiency and Welfare: Though the draft of this Code was prepared some time ago, it has not yet been approved by employers' and workers' organizations and has, therefore, not come into existence. There have been objections to some of its provisions from both sides. The employers, for instance, object to the clause which says that employers shall offer their employees reasonable wages and retirement benefits, for the reason that the present terms are reasonable enough and that a code containing this provision will inevitably set in motion a fresh series of demands by workers. Workers object to clauses such as that they would only make reasonable demands on industry or that they would actively support schemes of rationalization. They enquire whether they have hitherto been making unreasonable demands and whether they have been obstructing rationalization schemes meriting support. They too argue that these provisions will weaken their stand in the eyes of employers.

Opinion on the Codes has been conflicting. While official sources have been quite optimistic about their functioning and results, unofficial observers have not been slow to criticize them as ineffective. Commenting on the absence of major strikes in the country—a result attributed in official quarters to the successful working of the Codes—the *Hindustan Times* wrote in an editorial on 11 August 1961: "But is it right to attribute this to the Code of Discipline and the Code of Conduct on the moral worth of which the Planning Commission has waxed eloquent? If industrial peace has been relatively undisturbed, it is largely because, given current market conditions, managements have generally found it profitable and prudent to settle rather than resist wage and other claims. In the process, the consumer, and ultimately the country as a whole, have usually suffered. The high-cost economy which more and more of us are learning to regret, especially when export prospects are discussed, is a natural consequence." Repudiating these comments a Deputy Minister for Labour wrote in the press: "Your facts are all wrong. During the relevant period, prices have been rising and were not compensated to any substantial extent by a rise in wages. The wage increases consequent on the setting up of wage boards came not before but after the gains from the Code of Discipline had become visible. These wage increases have so far touched two or three industries only, whereas the welcome change in the climate of labour reaction is known to be much more widespread. Do you intend to convey that the employers came suddenly to acquire an yielding

disposition after the introduction of the Code of Discipline whereas before that they were unbending?" The editorial had drawn no such conclusion; it had merely said that it was because of the current market conditions that managements were settling higher wage claims but that this was happening at the cost of the consumer. The Deputy Minister's defence went on: "In your one-sided enthusiasm you seem to have totally ignored the stress on efficiency and productivity and on the obligations of working class which is a conspicuous feature of the chapter on Labour of the third plan." True the Plan mentions, or even stresses, efficiency and productivity, but the emphasis is more on the responsibility of management to provide "the most efficient equipment, correct conditions and methods of work, adequate training and suitable psychological and material incentives for the workers" than on the obligations of the working class. The extremely low productivity of the Indian worker as compared to international standards, the high rate of absenteeism, the excessive extent of loitering prevalent in Indian industry, the inability of supervisors to take a reasonable amount of work from their workers, the tendency of workers to collect in groups and to gossip during working hours, and various similar symptoms which have come to the pointed attention of even foreign experts making brief visits to Indian factories point to a disease which has not been checked either by governmental spokesmen or by labour leaders. The Codes have done nothing to improve these defects. The Deputy Minister's reply continued: "One gains the impression that you grudge this country the relative state of industrial peace it has experienced during the last two or three years and would rather have more labour trouble and unrest so that no credit may be earned by the Labour Ministry for anything good." This unprofitable controversy merely served to emphasize the emotional aspects of this worth-while but not conspicuously successful experiment.

At an employers' seminar held within a month of the correspondence mentioned above, the working of the Code of Discipline came in for critical study. The seminar was attended by the representatives of the two principal employers' organizations in the country, namely, the Employers' Federation of India and the All India Organization of Industrial Employers. A statement issued at the close of the seminar said: "There are instances where parties have endeavoured to use the Code for their own purposes by interpreting the wording of certain provisions to suit their convenience. At the level of individual workers, the Code was almost unknown. It was essential that the Union Government should make it widely known to all the parties, including the State Governments, that where the provisions of the Code seemed to come in conflict with the provisions of any law, the latter would prevail."

The Codes are useful to a limited extent in that they bring together in a pointed manner the obligations and responsibilities of the various parties and focus attention on their breaches. When breaches are enquired into and openly discussed at tri-partite committees, the very process of discussion produces a restraining and sobering effect on the parties, and instances of gross

violation of laws and of repudiation of responsibilities might decrease. But to call these instruments 'Codes', as if they were something original or weighty, some brilliant stroke of thinking that had hitherto eluded discovery, would be to create hopes and expectations that are bound to be belied all too soon. An implementation machinery is certainly necessary, for when laws are enacted and agreements made, they should be properly implemented. Much damage to industrial relations results from the failure or refusal of parties to accept, and act up to, their responsibilities and so long as legislative regulation of industrial relations is relied upon, effective machinery must be devised to enforce the law. The Codes are only an orderly and voluntary way of enforcing and implementing the obligations of the various parties. To call them developments of outstanding importance and to look upon them as the main content and direction of what needs to be done in the Third Plan would be to lay undue stress on what is essentially a matter of procedure rather than of substance.

Reliance on the efficacy of such non-statutory codes is a matter of personal conviction. Shri Gulzarilal Nanda, the father of the Codes, firmly believed in their potency and potentialities for good. When a person espouses a cherished cause, he gives it whole-hearted support and refuses to believe that it is anything but good. But all persons do not have the same passionate adherence to measures evolved out of another's imagination. Already with Shri Nanda's departure from the Labour Ministry, the Codes have suffered a great eclipse.

CHAPTER IX

ARBITRATION AND WORKERS' PARTICIPATION

VOLUNTARY ARBITRATION

ANOTHER RECENT development in Government's labour policy is the enthusiastic support given by the Central Government, or more correctly the Labour Ministry of the Central Government, to the idea of voluntary arbitration of industrial disputes. Workers and their unions have been clamouring for some time past for the reference of unresolved disputes to voluntary arbitration rather than compulsory adjudication. The Second Five Year Plan referred to the use of voluntary arbitration in the settlement of industrial disputes and said that "Once disputes arise, recourse should be had to mutual negotiations and to voluntary arbitration. The machinery for facilitating these stages should be built up by the Central and the State Governments." With policy so firmly set, the Central Government got the Industrial Disputes Act amended so as to introduce a new provision, section 10A, providing for the reference of industrial disputes voluntarily to arbitration. The same section also laid down that the Arbitration Act, 1940 would not apply to voluntary arbitration.

Since then the Labour Minister of the Central Government has lost no opportunity of urging on all concerned, including other Ministers of the Central Government in charge of public sector undertakings, the importance of solving all outstanding labour-management disputes through voluntary arbitration in preference to compulsory adjudication. This official campaign has coincided with a similar one started by the I.N.T.U.C., which, while succeeding in getting the Appellate Tribunal abolished, found itself faced with an unexpected situation in which large numbers of appeals from industrial awards found their way to the Supreme Court. The I.N.T.U.C., which had campaigned for the abolition of the Appellate Tribunal primarily on the ground of the delay involved in the final settlement of disputes, now felt even more embarrassed because of the considerably greater delays involved in appeals before the Supreme Court. It started doing propaganda in favour of a scheme of immediate settlement which would provide for no appeal from an award and no attack against it on any of the numerous pleas that could be taken under the Arbitration Act, 1940. Such a scheme was the one of voluntary arbitration devoid of the support of the Arbitration Act, as provided in section 10A of the Industrial Disputes Act.

The President of the I.N.T.U.C. said at the eleventh annual session of the I.N.T.U.C. in April 1960 as follows:

"If you want to have democracy in industry, acceptance of arbitration

must be secured. Your pay scales, your leave rules, and other conditions of service are liable to be changed from time to time in a dynamic society. These cannot be permanent and, therefore, they have only temporary importance but the arbitration machinery, which bestows a proper status upon you, which enables you to put your case before a third party, which enables you to present to the people of this country the material to judge as to who is right and who is wrong and which secures peace in the industry, brings contentment to you, help to the industry and prosperity to the country, is a permanent asset of great value for the working classes. It is for the acceptance of this most valuable right of arbitration that you, along with your organization, have to live and if necessary to fight."

Commenting on this speech so weighted with the virtues of voluntary arbitration, the *Commerce* of 4 June 1960 said:

"It is not easy to probe the reasons behind the I.N.T.U.C.'s sudden discovery of the sanctity of arbitration. For the I.N.T.U.C. had played a prominent part in dethroning the "Giri Approach" and instituting in its place the present system which, while leaving ample scope for settlement of disputes through mutual negotiation and arbitration, also provides that, in case settlement is not reached by this method, the dispute should be referred to adjudication. The I.N.T.U.C. is not perhaps satisfied with the results of the working of the adjudication machinery. If the reason is that adjudication is a long-drawn-out process, involving much delay, then it should have been the first to support the demand for the revival of the Labour Appellate Tribunal. On the other hand, it opposed the suggestion tooth and nail at the eighteenth session of the Standing Labour Committee held at New Delhi in January last. In fact, it was chiefly due to its opposition that the proposal was shelved. The only other possible reason one can see for the opposition to adjudication is perhaps the feeling of trade unions that the outcome of adjudication has not been generally favourable to workers. If that is so, it is not a principle but the immediate gain to workers that is at the root of the I.N.T.U.C.'s current fancy for arbitration."

The Code of Discipline, brought into effect in 1958, reiterated the principle of voluntary arbitration and laid a moral responsibility on employers and workers to resort to voluntary arbitration on failure of other methods of settlement. By that Code the parties agreed "to bind themselves to settle all future differences, disputes and grievances by mutual negotiation, conciliation and voluntary arbitration." If ever a Code was observed in its breach, this was it. Government which had thrown its weight in favour of acceptance of the Code of Discipline was equally bound by the clause relating to voluntary arbitration, but Government as employer proved as unwilling as any private employer to refer disputes to voluntary arbitration. The President of the

I.N.T.U.C., referring to the rejection by the Central Government of some of the recommendations of the Pay Commission, said: "If the Government as employer will not agree to abide by the Code of Discipline and submit to voluntary arbitration all unresolved disputes, it can have no face to approach the private sector and compel it to honour the Code. It cannot blacklist defaulting employers because the Government will itself have to head the list. The Government as an employer cannot adopt double standards, one for itself and the other for others."

Employers, whether in the public sector or in the private sector, have not found it possible to accept voluntary arbitration on any large scale. As late as January 1961 the A.I.T.U.C. pointed out that "the Government had not only not been able to get the Code implemented but the employing Ministries had not yet ratified the Code." To this the Labour Minister's answer in Parliament was that the public sector was no angel.

At the eighteenth session of the Standing Labour Committee held in March 1960 the conclusion was reached that voluntary arbitration in its present form did not bind workers who did not belong to a trade union which had entered into an agreement with the employer and that the Industrial Disputes Act should be amended so as to make such agreements binding on all employees, irrespective of whether they belonged to the union or not. The Industrial Disputes (Amendment) Act No. 36 of 1964 has made provision for this purpose. A new sub-section (3A) added to section 10A of the main Act lays down that where an industrial dispute has been referred to arbitration and the appropriate Government is satisfied that the persons making the reference represent the majority of each party, the appropriate Government may issue a notification making the employers and workmen who are not parties to the arbitration such parties so as to be bound by the arbitration award.

That voluntary arbitration has not caught on is clear from the fact that in 1961 only 6 disputes were submitted to voluntary arbitration as against 324 settled by direct negotiation, 480 by conciliation and 487 by other forms of Government intervention.

The employers have not taken kindly to voluntary arbitration for various reasons. The most important of these appears to be that voluntary arbitration should be purely voluntary and not compulsorily voluntary. The considerable amount of pressure brought to bear on employers through entreaties, exposures, and similar means robs voluntary arbitration of much of its voluntariness. That is why the Employers' Federation of India, the largest employers' organization, has chosen to characterize voluntary arbitration as neither voluntary nor amounting to arbitration. They have called it "compulsory arbitration." If a dispute is settled through compulsory adjudication under the Industrial Disputes Act, the parties can seek further remedies against the award both in the High Court and in the Supreme Court. In any agreement for voluntary arbitration, they would be throwing away that valuable right. The Supreme Court has ruled authoritatively in *Engineering Mazdoor*

Sabha and Others vs. *Hind Cycles Ltd. and Others*[1] that for invoking Article 136(1) of the Constitution two conditions must be fulfilled, viz., (*i*) that the proposed appeal must be from a judicial or a quasi-judicial decision, and (*ii*) that the said decision must have been made by a court or tribunal. For fulfilling the latter condition, the adjudicating body must be constituted by the State and be invested with the State's judicial power. "Even if some trappings of a court are present in the case of an arbitrator under section 10A of the Industrial Disputes Act, he lacks the basic, the essential and the fundamental requisite in that behalf, because he is not invested with the State's inherent judicial power. He is appointed by the parties and the power to decide the dispute between the parties who appoint him is derived by him from the agreement of the parties and from no other source . . . . He is not a tribunal because the State has not invested him with its inherent judicial power . . . . Hence an appeal under Article 136 of the Constitution against an award made by an arbitrator under section 10A to whom the dispute was voluntarily referred by the parties must be held incompetent." It would be no pleasure for the large majority of sensible businessmen and industrialists to drag their employees to the higher civil courts for a trifling advantage or for simply harassing them, but it should be their right to get unconscionably erroneous or onerous awards passed by industrial tribunals, unchecked by the possibility of appeals, rectified. Moreover the Arbitration Act, 1940 does not apply to voluntary arbitrations of industrial disputes. Under the Arbitration Act, 1940, the awards of arbitrators can be challenged on the ground of corruption or misconduct of the arbitrator, but where the Arbitration Act does not apply, such a challenge is not possible. Thus as far as the employers are concerned, by agreeing to voluntary arbitration they would have thrown away their right to seek relief in the High Court and in the Supreme Court, forfeited their right to protection in the event of the misconduct of the arbitrator, and bound themselves to an award which might quite easily be repudiated by a rival union or by non-union members.

If voluntary arbitration, to which unions seem to be passionately devoted for the time being, is not readily accepted by employers, it would be more fruitful on the part of all concerned to examine why this should be so than merely to castigate employers, public or private, for their alleged intransigence. A careful study of voluntary arbitration and of its successes and failures in other countries where it has been tried out should have occurred to the votaries of voluntary arbitration. The country with the largest experience in the field is the United States and many valuable lessons can be learnt from its experience. In the United States arbitration is confined largely, but not exclusively, to grievance arbitration rather than contract arbitration. Grievance arbitration proceeds on the basis of the jointly-negotiated agreement, which is the law to be interpreted, applied, extended and reconciled by the

[1] 1962 II L.L.J. 760.

arbitrator taking the role of a judge. It is essentially a judicial proceeding, the judge applying an existing law and trying to give his own interpretation of it in the context of the rival claims of the parties. This, of course, is a great simplification of what grievance arbitration could involve, for many abstruse questions can arise in relation to a written agreement. The contract may be silent on many crucial issues and the arbitrator's task of trying to divine what the parties might have accepted as reasonable in respect of those issues is none too enviable. Contract arbitration—in particular wage arbitration—is a venture into the unknown without any guide lines. There are, for instance, no generally accepted standards of wage fixation. The arbitrator has no means of assessing fair standards of profits and prices in order to be able to decide what should be fair wages. His ideas of business prospects may not coincide with those of the employer. The employer is, therefore, unwilling to jeopardize his financial position and stakes by permitting an arbitrator to make experiments at his cost. It has been estimated that not more than two per cent of the general wage changes in collective bargaining are arrived at through arbitration. Ninety-eight per cent of wage changes are the result of collective bargaining, pure and simple.

In spite of the general antagonism to contract arbitration in the United States, there have been such arbitrations from time to time. During periods of inflation, when the key criterion for wage fixation was the cost of living, unions were eager to arbitrate wage changes. In periods of stable prices or in times of deflation, unions were found to be unwilling to get wage changes submitted to arbitration. In other words unions have preferred arbitration whenever it suited them to do so. Whenever arbitration was agreed to by unions, that was in the expectation that the arbitrator would be compelled, on account of increase in the cost of living or other measurable factors, to grant an adequate increase in wages. When, at other times, there would have been every justification for awarding a reduction in wages, unions have stubbornly refused to agree to arbitration. The policy of unions has always been: More without a struggle, if possible; nothing less without a struggle wherever necessary. Unions are, therefore, not actuated by any principles in accepting or rejecting arbitration. American unions have never shown anything like the fervour for arbitration which was exhibited at the eleventh session of the I.N.T.U.C. by its president. Their constant endeavour is to strive for more and to resist less. This will be borne out by a study of the history of American wage arbitration during the last half century or so.

Managements, in turn, have accepted arbitration for specific reasons of their own. Whenever they have been weak and unable to stand a strike, they have readily agreed to arbitration. In public utilities, in which the rates or fares are controlled by public authorities, managements have invariably preferred arbitration both to strengthen their claims for revision of rates or fares and to avoid antagonizing the community with a work stoppage.

In special situations both labour and management would prefer arbitra-

tion to any other method of settlement. When a union knows that a reduction in wages is inevitable, it would readily agree to arbitration so that the responsibility for the reduction may be passed on to the arbitrator. Similarly, in some cases, when a management knows that a large increase is inevitable, it might agree to arbitration in order to avoid awkward explanations to the shareholders.

Thus voluntary arbitration, when accepted by managements and unions in America, is largely a tactical weapon which may be used or repudiated as circumstances demand and is not a matter of principle. We should bear this in mind when we tell Indian employers or unions how unreasonable they are in refusing to agree to voluntary arbitration.

Moreover voluntary arbitration in respect of labour disputes is quite different from arbitration in, say, a civil or commercial dispute. In the latter the arbitrator may render an award based strictly on the law and contract applicable to the matter in hand, regardless of whether the award approximates to the wishes of either party or not. But in wage arbitration particularly, the arbitrator invariably projects himself into the positions of the parties and renders an award to which violent objections will not be taken by both parties. Where an arbitrator ignores the viewpoints of both parties and arrives at some decision of his own fancy based on his own ideas of justice and equity, he is obviously in for trouble. In other words, the effort of most arbitrators is to bridge the gap between the standpoints of the parties in such a way as to give substantial satisfaction to one of the parties and some satisfaction at least to the other. This is largely so because there are really no precise or measurable criteria by which to judge the rival claims and to give a decision. Though many criteria are often quoted in arbitration and considered, only a few like intra-industry comparison or the cost of living have any compulsive effect on the mind of the arbitrator. The principle of comparison enables the union, the management and the arbitrator to take shelter under an effective cover. The cost of living criterion is also a precise one, readily translatable into cash. The numerous other criteria quoted are far less definite than these, and though they are impressively urged, they seldom have any precise effect on the decision. With wage criteria so vague, they are discussed and debated upon only with a view to pressing them into service to support a decision otherwise arrived at by the arbitrator. The wage arbitrator is not a judge fashioning decisions out of his own ideas of justice and equity. In a Yorkshire Coal arbitration of 1879, Judge Ellison is reported to have lamented: "On what principle I have to deal with it, I have not the slightest idea . . . . There is no principle of political economy involved in it. Both masters and men are arguing and standing upon what is completely within their rights." Students of labour-management relations tell us that the position is substantially the same today. In the absence of precisely-measurable criteria, what the arbitrator prefers to do, in the interests of his threatened popularity, is to consider his responsibility as an extension or continuation

of the collective bargaining process started by the parties themselves. An American arbitration board (Public Service Electric and Gas Company and Chemical Workers) was frank enough to say: "It accepts with some discrimination of values the several pertinent criteria emphasized by one side and the other. Candour requires it to be said, however, that the Board, in deliberation, advanced its thinking at once to an area within the narrow limits to which direct collective bargaining, as made known on the record, had brought the parties when deadlocked. Pragmatically, absent certitude or fiat in such matters, principles forged by the parties themselves are fair guides, in labour relations especially, to solutions designed to achieve mutual acceptance if not cold intellectual satisfaction."

In effect, therefore, wage arbitration in particular is to be looked upon as an extension of the process of collective bargaining started by the parties. The parties themselves are the best judge to decide when such an extension is in their mutual interests. If they fail to agree to arbitration, it might only mean that they have failed to conclude their bargaining in a final form.

The reason why unions in India are reported to be campaigning for voluntary arbitration is not that they love arbitration but that they hate adjudication. In every arbitration or adjudication, workers stand to gain something. If, as seems likely, arbitration in India tends to be carried out more like adjudication than as a mere extension of collective bargaining, the quantum of the gain would be no greater under one system than under the other. What is awarded is safe and is immediately available under arbitration, but that may not be so under adjudication. Since workers cannot get the benefits enhanced by resort to High Courts and the Supreme Court, they have very little interest in their right to approach these higher courts. On the other hand resort to these courts by the employer, which is permissible under adjudication but not under arbitration, always carries with it the risk of a reduction of the benefits granted by the tribunal and of considerable delays in securing what is finally allowed to workers.

The reason why managements are not over-enthusiastic about arbitration is that adjudication carries with it certain attendant rights, namely the right to seek relief in the higher courts, while arbitration does not. As far as managements are concerned, the extent of damage is the same whether the process be arbitration or adjudication. If then adjudication gives them certain additional rights which arbitration does not, there seems nothing unreasonable in their preferring adjudication to arbitration.

If, on the other hand, arbitration in India tends, sooner or later, to follow the pattern adopted in the West, namely, an extension of collective bargaining, employers may have even greater reason to feel apprehensive as the arbitrator's attention will then inevitably be riveted on the no-man's land forming the gap between the last-announced positions of the two parties.

If arbitration is, therefore, not wholly welcome to the employer and Government still desires to advance it, it should be realized that it is the availability of

compulsory adjudication that is standing in the way of voluntary arbitration and that if the former is kept out of the way, the latter is bound to show its full potentialities. If an employer is faced with the alternative of strike or voluntary arbitration, he might often prefer the latter, regardless of the limitations under which it would be functioning. But if an employer has a choice between strike, voluntary arbitration (with no further remedies), and compulsory adjudication (with possible remedies in two superior courts), it is a wholly unrealistic reading of human psychology to expect him to prefer voluntary arbitration to adjudication.

Here indeed is an interesting situation. The unions say that they prefer arbitration to adjudication, and yet even to give a fillip to arbitration, they will not give up adjudication, for the retention of which they have vehemently fought ever since the days of Shri Giri. The unions must have the protection of adjudication and yet enjoy the profits of arbitration. The following passage from Shri Giri's opening speech at the twelfth session of the Indian Labour Conference held at Naini Tal in October 1952 will be read with interest: "It has, therefore, been my firm conviction all these years that internal settlement of disputes is eminently to be preferred to compulsion from outside and that collective bargaining and voluntary arbitration should be encouraged in preference to compulsory arbitration. Compulsion may be inevitable during war or in times of emergencies, but it is as inappropriate in peace as drugging is in health. The country has had compulsory arbitration for full six years after war and, I feel, has already grown weary of it." Then the unions were not in a mood to admit openly that they had grown weary of compulsory adjudication; now they seem to be ready to do so. And even when they are weary of it, they are clinging to it with a tenacity that is truly inexplicable.

Voluntary arbitration is part and parcel of the Code of Discipline. This was emphasized at the 20th Session of the Indian Labour Conference held in August 1962. The decisions recorded said: "Whenever conciliation fails, arbitration will be the next normal step, except in cases where the employer feels that for some reasons he would prefer adjudication, such reasons being creation of new rights having wide repercussions or those involving large financial stakes. However the reasons for refusal to agree to arbitration must be fully explained by the party concerned in each case, and the matter brought up for consideration by the Implementation Machinery concerned."

After the declaration of emergency following the Chinese attack, employers and workers met in New Delhi on 3 November 1962, when a resolution on Industrial Truce was adopted. This too referred to the need for settlement of disputes through voluntary arbitration: "All complaints pertaining to dismissal, discharge, victimization and retrenchment of individual workmen, not settled mutually, should be settled through arbitration."

Such high-pressure inducement is really compulsion — compulsion not through legal process but through moral pressure. That these resolutions passed at tri-partite conferences did not reflect the real intentions of the parties

is clear from the fact that out of 1,291 disputes in 1961 only 6 were settled by arbitration.

A writer in the *Economic Times* (D. P. Mukherjee) puts the present plight of the employer thus: "The 'poor' employer in India must first be forced to accept arbitration (though in law it is voluntary), then be forced to pay for the arbitration, and then be told to accept the financial liability arising out of the arbitration without any remedy in the shape of an appeal. Is this social justice?"

It is clear, therefore, that voluntary arbitration, like collective bargaining, cannot thrive so long as compulsory adjudication is available for the settlement of disputes. After the withdrawal of compulsory adjudication, voluntary arbitration will find increasing scope. Its main utility will, however, be confined to the settlement of grievance disputes. It will be used less frequently to settle contract disputes. In this matter our experience will be no different from that of others who have already tried out the possibilities of voluntary arbitration.

Workers' Participation in Management and Joint Consultation

An important aspect of the current labour policy which is described in the Third Five Year Plan as of "major" significance in the industrial life of the country is the progressive extension of the scheme of Joint Management Councils to new industries. As this scheme develops, the Plan claims that "workers' participation may become a highly significant step in the adaptation of the private sector to fit into the framework of a socialist order." The Plan proceeds to advocate that "workers' participation in management should be accepted as a fundamental principle and an urgent need."

The Second Five Year Plan published in 1956 had referred to the possibility of such an experiment in a more guarded manner. It said that "for the successful implementation of the Plan increased association of labour with management is necessary." Such a measure, according to the Plan, would help (*a*) in promoting increased productivity, (*b*) in giving employees a better understanding of their role in the working of industry, and (*c*) in satisfying the workers' urge for self-expression.

In pursuance of this conviction that workers' participation in management, earlier referred to as workers' association with management, was necessary for the successful implementation of the five-year plans and for fitting the private sector into the pattern of a socialist order, the Government of India sent an influential tri-partite group of officials and non-officials on a tour of European countries in order to study the systems of workers' participation obtaining in those countries. The report submitted by the Study Group was placed before the Indian Labour Conference held in July 1957 at which a decision was taken to try the experiment of workers' participation in management in 50 selected units. Thereafter a seminar attended by a large number

of top representatives of management and labour was held in January 1958. Model rules for the constitution and functioning of joint management councils were settled at the seminar. Since then the tempo of enthusiasm seems to have waned considerably. Some thirty establishments had volunteered to set up joint management councils in the first flush of enthusiasm, but the Third Five Year Plan published in 1961 reported that joint management councils had so far been set up only in 23 units. It is obvious that the scheme met with only limited success after the first official push.

The Study Group which visited several European countries has brought back much valuable information which requires notice. The Group summarized its observations in these terms: "The systems of workers' participation evolved in the countries visited by us differ not only in form but also in the degree of participation practised. In U.K. and Sweden participation is practised through joint bodies which have only an advisory status and have been set up by agreement generally without any legal compulsion. In Belgium, France and Germany, on the other hand, the machinery for participation is based on legal sanction and, in the last two countries, workers are represented also on the boards of management. At the other end is Yugoslavia where undertakings are run by the employees themselves through an elected council and a management board."

Experience in Foreign Countries: In the United Kingdom workers' participation, or more correctly joint consultation, is through joint consultative committees set up for the purpose both in the private and public sectors of industry. In the public sector the nationalization laws require that such bodies be set up. Joint consultative bodies have a variety of structure. The smaller firms have a single committee, sometimes with subcommittees. Other firms have a main committee and separate departmental committees. Large factories have shop committees, departmental committees and a main committee, each one sending representatives to the higher-level committee. The nationalized industries have joint consultative bodies at the national, divisional (or district) and area (local) levels.

The committees consist of equal numbers of representatives of management and of employees. The employees' representatives are elected by secret ballot; those of the management are nominated by the Company. In many cases, candidates for election have to be union members, though non-members are allowed to vote.

The functions of joint consultative committees are generally the following:

(*i*) The safety, health and welfare of employees;
(*ii*) Questions of training, education, work rules, codes of discipline and other general personnel problems;
(*iii*) Improvement in the methods of production, efficient use of the maximum number of production hours, economy in the use of materials;

(*iv*) Encouragement of suggestions for improvements within the factory.

An increasing number of managements consult these bodies on the state of trade, financial policy, production programmes, distribution of profits, etc. But questions relating to wages, conditions of employment and other matters which are normally the subject of negotiation and collective bargaining are excluded from the competence of these committees.

While joint consultation on the lines mentioned above is not objected to by the trade union movement, the Trades Union Congress has definitely rejected the idea of worker control as that would prejudice the workers' efforts to secure higher wages through bargaining. Though labour leaders have been made directors of nationalized industry, they are there only in their individual capacity as expert administrators and not as representatives of labour. The views of the Trades Union Congress on joint consultation are as follows:

> "Joint consultative machinery is essentially advisory as distinct from executive in its scope. In the last resort, and after full discussion with their employees, the responsibility for policy decisions must rest on the boards (of management) concerned. This limitation, which is inherent in the policy of Congress, must be recognized and accepted and joint consultative machinery must not be expected to give executive power to workers' representatives. In instances where too much has been hoped for, the results have been disappointment and frustration and, what is perhaps even more important, subsequently the machinery has not been used adequately for its intended purpose."

The attitude towards joint consultation is well expressed in a foreword to 'Positive Employment Policies' written by the British Minister of Labour in 1958: "Industrial efficiency has always depended as much upon human factors as upon mechanical and technical resources, and high productivity and adaptability demand the active cooperation of employees at all levels. This is best achieved where workers understand the aims and plans of management and are confident that their interests are being safeguarded."

Regarding the form and extent of joint consultation, the *Industrial Relations Handbook* published by the British Ministry of Labour says that "the extent of joint consultation varies widely from industry to industry and from firm to firm. Some firms already possess and operate most elaborate and successful schemes of joint consultation; others may have a works committee with limited terms of reference. Yet others possess no such machinery and have apparently still to be convinced of the advantages of joint consultation."

Joint consultation in the United Kingdom has, therefore, never meant co-determination in any form. It is the duty of the management to manage the concern and workers are not inclined to demand a share in the respon-

sibilities of management. The joint consultative machinery does not possess any executive power. At the same time, workers realize that in the large-scale organization of today both management and labour can function cooperatively with advantage to both. The function of the joint consultative machinery is "to consult and advise on matters relating to production and increased efficiency for this purpose, in order that maximum output may be obtained from the factory." Joint consultation is the means by which workers appreciate the problems of production and help to increase output and profits so that they can claim and enforce their share in the profits of such additional effort.

Experience of joint consultation in the United Kingdom shows that it has not fulfilled the high hopes and expectations entertained of it by its ardent advocates. Nevertheless it has helped to bring about better understanding in industry and a lessening of suspicion and tension. Industrial relations have invariably improved, and this is a positive gain. This is lost sight of by persons who dismiss joint consultation as nothing more than a mere exchange of views. It has also provided valuable training for the representatives of both sides.

In Sweden, where joint consultation has been markedly successful, an agreement reached in 1946 between the central organizations of employers and workers provides for the setting up of joint enterprise councils. Such councils are to be set up in firms with 25 or more employees. In large firms, councils have been established in separate plants or divisions coordinated by a central committee. The council consists of equal numbers of representatives of workers and of the management.

The competence of the councils has been defined as "to deal with questions concerning the technique, organization, planning and development of production, with a view to making use of the experience and insight of employees. To this end it is the duty of the employer to supply the council with continuous production surveys, including reports of changes undertaken or planned or other more important alterations in operating or working conditions within the enterprise, and of new products, new manufacturing or working methods, and other technical arrangements in so far as the revealing of them could not cause damage for the employer."

The council receives regular information regarding the economic position of the enterprise "in so far as revealing thereof could not cause damage for the employer."

Nationalization is not a live issue in Sweden as unions have found that they can obtain satisfaction from big private industries. There is strong pressure from labour for the passing on of information but not for participation in management.

The Study Group's analysis of the Swedish experience is that it "points to the necessity of encouraging strong trade unions, of building up a satisfactory system of collective bargaining and settlement of disputes, and of an

energetic campaign of 'education' of all the parties concerned. In Sweden the initiative in this regard has almost entirely been that of the employers and workers."

The I.L.O. publication, *Co-operation in Industry*, referring to the joint production committees or works councils of the Scandinavian countries (Sweden, Denmark and Norway), says that these organizations are concerned not merely with increase of production but with social questions and that in this respect they are to be distinguished from the production committees of Canada and Great Britain which are concerned primarily with production. In regard to social questions, the Scandinavian committees endeavour to maintain good relations between the employer and wage earners, to improve the conditions of work in the undertaking, especially as to safety and hygiene, to see that the workers are happy in their work and to promote vocational training. In Sweden, for instance, works committees have to be consulted in respect of any proposal to curtail activity or to retrench workers. If there is any proposal to dismiss or suspend workers, the employer must inform one of the workers' representatives of the contemplated step, and the representative may demand that the question be laid before the committee. In all Scandinavian countries much economic information has to be supplied by the employer to the committee. The Danish and Norwegian agreements provide that the members of production committees must receive the same information as is given to shareholders. It is generally agreed that in Scandinavian countries works committees are an excellent means of ensuring cooperation and improving production.

In France and in Belgium the setting up of works committees is compulsory under the law. In France all non-State establishments must have works committees if fifty or more workers are employed. Most nationalized industries have workers' representatives on their management boards and there is provision also for works committees. The French works committees have advisory and administrative functions. Their advisory functions consist of improvement of conditions of work and living, examination of suggestions for improving production and recommending rewards for valuable suggestions made by workers. Supply of information to works committees concerning profits is compulsory. The works committees have the right to nominate two members to attend the meetings of the boards of directors of limited liability companies in an advisory capacity. They have also administrative powers in respect of welfare schemes. These include provident and mutual aid schemes, canteens, consumers' cooperative societies, housing allotments, holiday camps, medical services, etc. The boards of directors of nationalized institutions include representatives of the staff nominated by the most representative trade unions.

The French system was introduced through compulsion of the law. It is not the result of mutual understanding. Workers consider the measure as a halting

first step towards full workers' control, while employers have tended to view them as concessions extracted under duress.

The Study Group gathered the impression that there was little cooperation round the table. The employers complained of too much interference by Parliament. Works councils had not been a success as the right atmosphere was lacking.

The Study Group's impressions of the French system were summarized as: "It is rather formal and rigid. There is indifference and even hostility on the part of many employers, which has yet to be got over, and over the whole field hangs the cloud of division in the ranks of workers."

In Belgium too worker participation is based on legal compulsion as in France. Joint works councils consisting of the manager or his representatives and a workers' delegation varying from 3 to 14 elected workers' representatives have been prescribed for all industrial, commercial and financial enterprises employing more than 50 workers. The functions of the councils include advisory and administrative responsibilities. They share administrative powers with management in respect of employment rules and social services. On all other questions their role is advisory. They are, however, entitled to receive information on a variety of subjects such as productivity and general matters, the results obtained by the undertaking, etc. They can express opinion on all questions of an economic character, on arrangements for, and conditions of, working and output, etc. Their advisory functions are very extensive.

The workers' organizations are not very satisfied with the working of the law. They have said that workers in most establishments are disappointed with the results produced and that many employers have "tried to dodge the spirit of the law."

The Study Group's conclusions as a result of the study of French and Belgian systems are: "A firm impression left with us was that workers' participation in management could be successful only as a supplement to a well-established system of collective bargaining. Without strong and cooperative trade unions, schemes of participation would probably remain mere paper schemes. Strong trade unions were necessary not merely for safeguarding the interests of workers but also for making participation work. Clash of interests between works councils and trade unions should be carefully avoided and in this connection, the Belgian device of election of workers' representatives from trade union lists is worthy of note. Another point brought out was the desirability of getting higher paid workers into the unions in order that at least two class interests might come together and the necessary expertise find its way into the workers' delegation on the organs of participation. Another suggestion in this connection was that the set of workers' representatives who did bargaining work should be different from that engaged in consultative work."

We would do well to take note of the Study Group's observation that a

"firm impression" left with them was "that workers' participation in management could be successful only as a supplement to a well-established system of collective bargaining." Admittedly, collective bargaining is still in its rudimentary stages in India. Instead of making a serious effort to make collective bargaining a reality, we are making a fetish of workers' participation. This is a case of building the super-structure without laying the foundations.

In the Federal Republic of Germany participation takes the form of co-determination. Co-determination extends to the economic, personnel and social fields and covers management policy, personnel policy and the policy relating to piece-rates, working hours, vacations, accident prevention, sanitation, etc.

In all share companies, except those of mining and iron and steel, one-third of the members of supervisory boards must be elected by the employees of the undertaking who are qualified to vote. Not less than two of the employees' representatives must be employed in the undertaking; the remainder need not be so employed.

In mining and in iron and steel industries, there is legal provision for parity of representation of employees and shareholders on the supervisory boards. The nomination of all employees' representatives must be preceded by consultation with the trade unions represented in the undertaking and with their federations. The supervisory boards deal with management policy.

The works council deals with functions relating to personnel and social co-determination. These councils are not joint bodies but consist exclusively of representatives elected by the workers. Their duties as defined by the statute include: (*i*) making recommendations to the employer for action benefiting the undertaking and the staff, (*ii*) ensuring the application of acts, ordinances, collective agreements and works agreements, (*iii*) hearing employees' grievances and seeking to remedy them by negotiation with the employer, (*iv*) promotion of employment of disabled persons, and (*v*) combating of accidents, risks and dangers to health and making appropriate suggestions and participation in the application of safety measures.

On a number of matters connected with the working conditions, works councils have the right of "co-decision." These include the beginning and end of the daily working hours and of breaks, the time and place for payment of remuneration, the preparation of the leave schedule, the fixing of job and piece rates, engagements, transfers and dismissals, removal of the whole or of important departments of the undertaking, etc.

Co-determination in economic matters is through workers' representation on the board of supervision. One-third of the members of the board of supervision of a joint stock company are required to be employees' representatives. In coal and in iron and steel undertakings, a labour director has to be appointed on the management board, which is the most important decision-making body in a German corporation. The other members of the management board are two, one in charge of commercial matters and the other in charge of

technical matters. The board of management has to act on the principle of joint responsibility. Though the position of labour directors is difficult when decisions have to be taken on such personnel matters as wages, disciplinary action, grievances or lay off, the various directors have generally been able to work on the principle of compromise. The labour directors have not usually upset the customary hiring and selection methods.

The scheme seems on the whole to have worked well as Germany is free from the problem of rival trade unionism.

In Yugoslavia, the scheme of participation is auto-management. Since industry is nationalized, workers themselves constitute the management and there is no consultation or sharing of powers with representatives of private capital. The workers' collectives manage these enterprises through workers' councils and management boards.

Workers' councils, with memberships ranging from 30 to 200, approve the basic plans and the final accounts of the enterprise. They take decisions concerning the management of the enterprise and the fulfilment of the economic plan. They elect and can recall and change the management board. They exercise general supervision over the work of the management board and take decisions in regard to proposals made by the board.

The management board, consisting of 3 to 11 members including the director, has the responsibility for drawing up proposals for the Annual Basic Plan and also for preparing the monthly operative plan. It looks after the internal organization of the enterprise, including job classification. Questions of discipline, wages, promotion of workers, administration of the social insurance scheme, etc., are among its responsibilities. Its most important function concerns the day to day operation of the enterprise so as to ensure adequate production.

The Director of the enterprise who is an *ex officio* member of the management board is appointed by it. He is responsible for the day to day running of the enterprise. He is removable on the recommendation of the workers' council or the management board.

The Study Group did not visit the United States, where the experience in this field is of an entirely different pattern. Joint production committees came into existence during the Second World War with the primary object of increasing production. They indulged also in certain other patriotic activities with the object of encouraging participation in the war effort, but their predominant concern was increase in production required for the war. Though a large number of production committees were formed during the war, all but a relatively small number ceased to exist soon after the end of the war. The reason for this lack of support of the cooperative effort lies in the outlook of American trade unionism. American unions are not troubled by ideological pursuits or conflicts. They accept capitalism, and pay no lip sympathy to socialism or any similar economic system. Far from asking for a share in management, they want management to run the business and

wish to be left alone to claim their share of the spoils through collective bargaining. On the other hand a dynamic and assertive management is in no hurry to part with its prerogatives and responsibilities. Their attitude is: "we will attend to making profit : you will get your share through bargaining." Since the attitude of management, at least in this respect, is perfectly in harmony with that of unions, there is no possibility of conflict over the issue of labour participation in management. The American managerial view is summed up in the I.L.O. Publication in these terms:

"U.S. management knows from past experience that it must remain strong and independent as a group, just as do the unions, to survive, remain dynamic and continue to contribute to the nation's welfare. It feels that to share its responsibility to manage with a union would be disastrous." A pamphlet issued by the National Association of Manufacturers in 1946 advanced a number of arguments to show why the workers should not be given a direct share in management. It said: "The capacity to steer a business through the complex problems of our industrial economy requires an efficient management free to exercise flexibility, speed of decision, and the authority necessary to accomplish results. Two drivers at the wheel can never steer industry towards maximum production and employment. Anything that would deprive management of the ability to make decisions promptly and carry them out effectively would be a most serious blow to industry's ability to produce needed goods at lower prices."

British trade union officials, nurtured in ideas of joint consultation and cooperation, who visited American industry in the early years after the last war, were frankly surprised at the attitude of American trade unions. They reported : "The truth is that most unions do not expect or, we suspect, want to be consulted about the running of a plant. Management, in effect, can do what it likes within the terms of the agreement, but whatever it does is subject to consideration by the union which then decides on appropriate action. There is nothing restrictive in this attitude even if it is not cooperative. The job of managing is left to management."

The President of the C.I.O. declared : "To relieve the boss or the management of proper responsibility for making a success of the enterprise is about the last thing any group of employees—organized or unorganized—would consider workable or even desirable."

Such union participation in management as exists in the United States is largely with reference to personnel policies and practices. Recruitment and termination policies have been strongly influenced by unions. In the sphere of disciplinary action also there has been increasing assertion of union influence through effective grievance procedures. Union influence is perhaps strongest in the matter of wages and hours. Promotion and seniority have not come under union influence to any great extent.

Though the areas of worker participation in management are limited, collective bargaining agreements are very extensive in scope and include many

matters which would be dealt with by joint consultation in Great Britain.

In Russia, at the other extreme, every industrial establishment is indirectly the workers' own establishment. Here, there is no question of participation; it is just a case of ownership through the agencies of the State. That is why official publications say that workers "participate in different ways in managing socialist production." Nearer the scene of production, industrial establishments are run on the basis of one-man management and while workers may not interfere directly with the day-to-day management, the executive who runs the management is controlled in many ways. Trade unions have ample control over him. According to an official report "at meetings, permanent production conferences, technical economic conferences and meetings of managerial personnel together with front-rank persons, called by directors of enterprises, they discuss questions of the operation of their sections, shops and enterprises, reveal the urgent needs of production and outline ways to meet them."

In the U.S.S.R., all efforts are constantly directed towards securing higher and yet higher production. The breaking of construction records is the constant endeavour of every manager, technician or manual worker. "Emulation is the most wide-scale and all-embracing form of worker participation in the management of production." According to a collective report "our State and our trade unions work systematically in order to ensure publicity of, and comparison in, the results of the operation of enterprises; they bestow honour and distinction upon heroes of labour, and help those lagging behind to pull up to a level with the best workers." "The production Conference at an enterprise, shop, construction job, State farm or machine and tractor station concentrates on the tasks of carrying out the plan, a fuller utilization of internal reserves, ensuring high productivity of labour and improving the methods of managing, the given enterprise or construction job". The same report goes on to say that "an evidence of the working people's extensive participation in the management of production is furnished by the nation-wide discussion of the draft laws and decisions of State organs on the most important questions of the country's economic life."

"Workers, engineers, technicians, and office employees contribute corrections and amendments to the State plans, find out and utilize reserves in production, exercise, through their trade union organizations, control over norms, rates and wages, render practical assistance to public and economic organizations."

Between these two extremes of U.S.A. and U.S.S.R. lie the various other types of worker participation in management practised in other countries.

After a detailed study of the systems of cooperation obtaining in various countries, the I.L.O. study on Cooperation in Industry sums up the situation somewhat in these terms. Cooperation at the level of the undertaking, which is the most significant form of cooperation at present, is primarily associated with productivity—a problem of concern to all countries. Cooperation at the

level of the industry is related to the modernization or re-equipment of existing industries. At the national level the association of employers' and workers' organizations in the preparation and application of social policy is accepted as a fact in the majority of countries.

Cooperation at the level of the undertaking is through agencies variously termed works councils, works committees or production committees. In some countries the committees owe their existence to collective agreements; in others to legislation. With regard to the functions of these bodies, it is agreed that the committees should be competent in respect of social questions which do not belong to the field of collective bargaining between employers and trade unions. The committees are competent to discuss with the employer questions relating to the organization and methods of production. While these committees have often even powers of management in respect of functions relating to social matters, the economic functions are strictly advisory. In a few countries workers are represented on the administrative boards of undertakings and participate directly in management.

Real cooperation is possible only if genuine trade unions exist. An atmosphere of cooperation or a natural desire to cooperate must exist if cooperation is to lead to any satisfactory results. Again for cooperation to be fruitful, there should be adequate knowledge of the questions which are the subject of cooperation and this can be achieved only through instruction and training.

Indian Experience: The second seminar on labour-management cooperation held in 1960 elicited many interesting facts. The papers circulated showed that the scheme of joint management councils had by then been introduced only in 7 public sector undertakings and 17 private sector undertakings. The initial effort had been to try out the experiment in some 50 establishments, but this number had in actual practice dwindled down to about half. The inaugural address of the Labour Minister drew attention to the fact that even to requests for information regarding the manner in which the scheme was operating in the units in which it had been introduced, the response had been insufficient. No positive information about achievements or difficulties had been supplied. The panel of experts maintained by the Ministry of Labour to render assistance to joint management councils had not been called upon to render any assistance.

In the course of the discussions most of the participants described the details of the working of joint management councils in their establishments. Several of the establishments made routine reports, suggestive of no great enthusiasm on the part of the members of the joint management councils. A few establishments had something worth while to report. The Simpson Group of Industries, Madras, and the Indian Aluminium Company Ltd., Belur, referred to successful experiments made to hand over responsibility for the administration of welfare measures to the joint management councils. The Tata Iron and Steel Co., Ltd., Jamshedpur, which had been practising joint

consultation since 1919, had set up a number of joint committees to deal with such difficult problems as job evaluation, specification of minimum qualifications, allotment of houses, etc. A separate joint council dealt with grievances, so that the joint council dealing with production problems did not get side-tracked with personnel problems.

The establishments in the public sector had no better story to narrate either. The Hindustan Insecticides, New Delhi, reported that the workers' representatives were nominated by the recognized union and that one of them was an outsider "whose presence had a sobering influence on the discussions." The Hindustan Machine Tools, Bangalore, which had received much publicity in the first year of the scheme for its highly successful experimentation in the new field was reported to have run into difficulties.

The desultory discussion that followed proved equally uninspiring. It was, however, agreed that joint councils of management had created confidence in the utility of this experiment and that steps should be taken to extend the programme to other units. Another conclusion was that the joint management council was not to be equated with the works committee "as the scope of the latter was relatively restricted."

A further effort to secure popularity for the scheme was made in February 1961, when a conference of Central Ministries was held to discuss the extension of the scheme to units in the public sector. A special committee was set up to review the progress of the scheme in the public sector. The progress of the scheme was reviewed at a meeting of the Standing Labour Committee held in April 1961 and by the Committee on Labour-Management Cooperation in May 1961. By the end of 1961, although joint management councils had been set up in 41 undertakings, 14 in the public sector and 27 in the private sector, only 29 were found to be functioning—11 in the public sector and 18 in the private sector. The *Indian Labour Year Book* for 1962 reported that 46 joint management councils were functioning at the end of 1962.

The Labour Ministry's annual report for 1964-65, released in April 1965, claims that joint management councils are functioning in 97 establishments, including 36 in the public sector and 61 in the private sector. A further enquiry will be necessary to establish how many of them are functioning effectively. Even this latest number of 97 is insignificant, compared to the number of establishments which could experiment with such a scheme were it at all attractive in their estimation.

Joint Management Councils Vis-à-vis Works Committees: It will be noticed that joint management councils have been set up on top of the statutory requirement regarding the setting up of works committees. No satisfactory explanation has been forthcoming as to why both a joint management council and a works committee are required in the same establishment except that "the scope of the latter (works committee) was relatively restricted." There has, however, been no attempt to find out whether the scope

of works committees cannot be adequately expanded either administratively or, if need be, even statutorily.

The legal requirement in respect of the setting up of works committees has been noticed earlier during the discussion on the scope of the Industrial Disputes Act. It is the duty of the works committee "to promote measures for securing and preserving amity and good relations between the employer and workmen and to that end to comment upon matters of their common interest or concern and endeavour to compose any material difference of opinion in respect of such matters." The functions of works committees have been expressed in such broad terms that it should be possible to bring within the scope of works committees a large variety of functions and responsibilities which are of common interest to employers and workers. A tri-partite committee was set up in July 1959 under the authority of the Indian Labour Conference to draw up "guiding principles" relating to the composition and functioning of works committees. The committee came to the conclusion that it was not practicable to draw up an exhaustive list of the functions of works committees but nevertheless appended an illustrative list of subjects with which works committees should normally deal. That list included conditions of work such as ventilation, lighting, temperature and sanitation, amenities such as drinking water, canteen, dining rooms, crèches, rest rooms, medical and health services, safety and accident prevention, adjustment of festival and national holidays, administration of welfare and fine funds, educational and recreational activities, promotion of thrift and savings, etc. Matters normally dealt with in collective bargaining were to be left out of the purview of works committees. The draft model agreement for the establishment of joint management councils also mentions responsibility for the administration of welfare measures, supervision of safety measures, operation of vocational training and apprenticeship schemes, preparation of schedules of working hours and breaks and of holidays, etc. These are all matters which could be assigned to works committees also. No doubt, joint management councils are to be consulted on various administrative matters and production problems and to be given information on a variety of subjects. There is no reason why the functions of works committees could not have been enlarged to include these also.

It is true works committees have not been a great success, but that might happen equally to joint management councils. In fact the experience so far does not show that joint management councils will fare any better than works committees. In several establishments works committees have been set up but are not functioning. One of the difficulties in their proper functioning has been reported to be lack of understanding of their precise role. Consequently different works committees have attempted to do different things. In some cases these committees have in fact been dealing with production problems—a role prominently assigned to joint management councils in the draft model agreement. Production problems such as bottlenecks hindering production,

difficulties in administering the quality control system, the difficulties of securing import of parts, reallocation and rationalization of production, etc., have all been discussed by some committees. The works committee of the Tata Iron & Steel Company discusses even problems of cost control, avoidance of waste, minimizing damage to machines, etc. Works committees have sometimes dealt with labour-management disputes as in fact some joint committees do even in advanced countries.

Works committees have often converted themselves into grievance committees in many establishments. Managements have generally not resisted this development, because in the absence of a well-developed grievance procedure, the only course open to employees is either to take their complaints to the conciliation and adjudication machinery of Government or to take the law in their own hands and stage strikes, slow-downs and similar demonstrations, regardless of the legality of such steps. So instead of concentrating exclusively on production or welfare problems of general interest to workers as a whole, managements have found it prudent to allow workers' representatives on works committees to raise and discuss individual grievances. This cannot be considered to be the most appropriate use of the joint consultation machinery, but managements cannot be blamed for adapting the machinery to immediate needs.

Works committees sometimes also undertake the task of collective bargaining. There are many instances of the annual bonus being settled through negotiation in works committees. Disputes on wage scales, leave terms and similar matters are also often settled after discussion in works committees. Lack of proper arrangements for collective bargaining on the one hand and for grievance settlement on the other has served to load different works committees with different lists of subjects, which are far more comprehensive than anything the framers of the Industrial Disputes Act might have had in view. So also all possible subjects that might ordinarily be entrusted to joint management councils would have been handled by one works committee or another even during the imperfect working of works committees all these years.

A few years ago the Central Labour Ministry decided that an investigation into the working of works committees was necessary in view of the widespread belief that these committees had, on the whole, failed to achieve the objective the legislature had in view when it made their constitution compulsory. The work was entrusted to a private research organization. The organization made a study of a number of works committees which were working reasonably satisfactorily. The report cautioned the reader that the conclusions would not be valid "for the undertakings in which the works committees have not been constituted or have become defunct." Statistics were collected and compiled to show how often works committees met, what they discussed, what was done with their recommendations, etc. It was like finding out and tabulating the height, weight, pulse and blood pressure of a

number of healthy persons who had not fallen ill for quite some time past. The enquiry would have served its purpose had it taken up for study a definite industry or area and analyzed all the works committees that should have been set up according to the law, all that were actually set up, those that were functioning with varying degrees of success and those that were still-born or had met with a premature death.

Extravagant Expectations: There has been a considerable amount of loose thinking in India about labour participation in management, for which the leaders cannot entirely be absolved of responsibility. The much-advertised socialistic pattern of society led to great expectations in many quarters. The common man was fed on mental visions of a society at some undefinable future period, of which he would be a prominent and prosperous member. As part of this heady vision of the future, the ordinary worker was led to believe that a day would come when he would participate in management. If one were to participate in a thing, one might even become a partner in it. Since top management was vested in the board of directors, workers would one day sit on those boards and take an active part in deciding policy. If trade union leaders could sit on the boards of directors of nationalized concerns in the United Kingdom, why could that not happen in India? Imagination runs riot with mental possibilities, and labour leaders can be excused if they begin to think that a plush chair in the managing director's room or sector is their appropriate place.

So in the early days of mental participation in management, there were serious expectations that there would be legislation giving labour an adequate share in management. Repetition converts a vague rumour into an accomplished fact, and consequently the unbridled outpourings of politicians and labour leaders began to convince the rank and file amongst labour that something important and spectacular was round the corner. In the early days of independence more or less the same thing happened in the political field. Ministers, jubilant of success, pretended to be humble enough to tell mass meetings that they were the servants of the public and hence their servants and that it would be their endeavour to attend to public complaints. Naturally some of the more assertive among village leaders began to feel that as masters they had every right to dictate terms to ministers. And many a comic situation arose out of this confusion. Occasionally ministers got into real trouble over their inability to fulfil their rash promises. A somewhat similar situation arose over the problem of participation. The lesser labour leaders whose vision was restricted to possibilities close at hand were quite disturbed when participation was in turn reduced first to cooperation and then to consultation. "What sort of a participation is this?" they began to ask when they were told that an important part of labour-management consultation consisted of receiving information about management. "We are here to decide: not merely to receive information" was their typical comment

when the early illusions were shattered by subsequent plain speaking.

So long as private ownership is permitted to run industry for profit, there can be no real co-determination or co-management except as a camouflage for something far less significant. Management cannot willingly be shared by two opposing forces, one to conserve profits for the shareholders and the industry and the other to distribute them to the workers. When the Whitley Committee of 1917 submitted its report, the labour members of the Committee appended a note that while national joint councils, district councils and works' committees advocated by the Committee would lead to more amicable relations between management and labour, they would not succeed in solving "the more serious conflicts of interest involved in the working of an economic system primarily governed by motives of private profit." Their diagnosis was certainly correct, for joint consultation cannot wipe off the consequences and conflicts of the profit motive which underlies all private endeavour. While the more prosperous democracies have fully succeeded in demonstrating that private profit, controlled to a reasonable extent through the fiscal policies of the State, is not inconsistent with public welfare and could, in fact, hasten and enhance the promotion of such welfare, there is no denying the fact that an economic system based on private profit lends itself to various abuses if it is not adequately controlled by the State and the public. If then the extreme form of socialism is the objective of the State, there is no alternative to changing the economic system and placing ownership and management directly under State control. Worker control can then theoretically be complete, though, as the Soviet experience shows, such worker control cannot be effective, and can at best be indirect, as there can be no place for two masters in a company at the same time. Subject to control over policies, the Director of an establishment in Soviet Russia is unhampered in his day-to-day management of his factory.

The British Socialists who, at one time, were toying with ideas that we in India have borrowed and are trying to implement have largely sobered down as a result of responsibility and practical experience. Their thirst for nationalization has largely been quenched. Even in the first round of nationalization they sensed the dangers of making the worker a co-director. Consequently the authorities set up by the various nationalization laws for the management of the undertakings include an expert in trade union affairs, often an ex-trade union official, but the trade union official, on appointment to the board of directors of a nationalized industry, severs all connections with his trade union and remains a mere expert in labour matters appointed to the Board.

Even if joint control of boards of management were considered advisable, it would not be possible for the large majority of unions in India to gather the expert knowledge required for running an industry. Technical and financial matters have become so complicated in recent times that none but professional managers well-versed in modern techniques can hope to cope with difficult management problems.

Feasible Plan of Consultation: While direct participation in management can safely be ruled out for trade unions in India for a long time to come, other measures of cooperation and consultation are both necessary and feasible. Though there is nothing in a name, inappropriate terminology can be misleading as far as the rank and file are concerned because of the psychological association of ideas with words. If all that we mean is just joint consultation, we should say so and not mince words. Terms like "worker participation in management", "labour-management cooperation", etc., might safely be discarded and replaced by terms such as "joint consultation", "joint consultative councils", etc.

Joint consultation, as distinct from tri-partite consultation, can be most effective at the level of the unit and somewhat less effective at higher levels such as the level of the industry, region, area, etc., the reason being that in the unit there is only one employer to discuss matters with his own employees whereas in a larger conglomeration of units constituting the industry, large numbers are involved on both sides with little cohesion or coordination. It is far easier for an employer to discuss and settle a matter with the representatives of his employees than for an association of employers to settle with a union or unions. Discussions at the national level are best conducted in tri-partite committees like the Indian Labour Conference, the Standing Labour Committee or the Industrial Committees for the various industries. We propose here to discuss only the unit-level consultative committee. It seems immaterial whether this committee is called a joint management council or a works committee. The argument cannot be accepted that the scope of works committees is limited and that some other body is needed to give effect to the intentions behind the new experiment in consultation and cooperation. It is the duty of works committees "to promote measures for securing and preserving amity and good relations between the employer and workmen." This authorization has, in practice, proved sufficient to enable different works committees to handle such diverse matters as production, productivity, welfare and grievances. Moreover it has already been fully accepted that consultation and cooperation must be voluntary and not thrust down on either party through compulsion. If then the parties are prepared to cooperate on a voluntary basis, surely any suggestion that the duties of works committees have not been comprehensively spelt out in the Industrial Disputes Act cannot be a bar to voluntary consultation.

So we should have either works committees or joint management councils but not necessarily both in the same establishment. Unnecessary proliferation of the consultative machinery will only add to confusion. It is not suggested that either of these categories should be abolished; all that is meant is that if an establishment has one of them, but not both, it should not be inferred that it is not interested in labour-management cooperation.

The importance of joint consultation cannot be over-stressed. Though joint consultation arose out of the urgent necessity to maximize production

during the two world wars, its potentialities for peace time was fully recognized by its promoters. Such a development was also inevitable with the large-scale growth of industry. While the small-scale owner or entrepreneur of old could easily keep in touch with his labour individually and explain to them his plans and problems, a manager in charge of a large establishment could not possibly do so. When numbers increased, workers could be approached only through their representatives and yet the need for consultation and communication became even more urgent. The complexities of modern industry multiply misunderstandings and consultation becomes doubly necessary. This can be done only through a formal arrangement for consultation.

The labour-management relationship is concerned primarily with four sets of problems, namely, production, welfare, collective bargaining over terms and conditions of employment and settlement of grievances. These are all, in a way, inter-connected, and while one machinery need not deal with all four of them, there must be some machinery for dealing with each of them. In a properly constituted system, the collective bargaining functions will be dealt with by the recognized union or the bargaining agent in negotiation with the employer. Generally all subjects covered by the expression "terms and conditions of employment" would be subject to this process of bargaining. There are grievances which arise out of the interpretation or application of the collective bargaining agreement. They are settled in accordance with a grievance procedure culminating in voluntary arbitration. Then there remain consultation and communication over the rest of the labour-management relationship area. Workers cannot be induced to produce more unless they are made to feel that they are engaged in a worth-while task. A wise employer would consider it in his interests to explain the plans of management to the representatives of his workers and what their implications are with reference to such matters as profits and losses, replacement and improvement of machinery, and the trend of labour's own share in the profits. The workers must feel that the prosperity that is being planned will be shared by both management and labour and that the business of planning and production is as much theirs as it is of management. That is why management must take the workers' representatives into their confidence and give them full information about the working of the establishment.

Joint consultation can be a success only in a climate of satisfactory adjustment of labour-management disputes and differences. If the disputes and differences get the upper hand, there can be no temptation for either party to raise the larger questions relating to improved and increased production and better welfare. So one of the important prerequisites to joint consultation is the existence of a well-organized and well-conducted trade union, recognized by the management, for the purpose of collective bargaining. The settlement of the terms and conditions of employment in a satisfactory and acceptable manner is the foundation of all joint consultation. People's minds must be taken off current worries before they can think of the future.

It is not enough if the terms and conditions of service are satisfactorily settled either through collective bargaining or through other methods such as voluntary or compulsory adjudication. Workers' grievances are inevitable in any large organization. They may be real or fancied, but so long as they are entertained by workers, they are a potent source of trouble and turmoil in the establishment. A proper grievance procedure for dealing with them is essential for the success of both collective bargaining and joint consultation.

Apart from arrangements for collective bargaining and grievances, joint consultation will not be a success unless there is a genuine desire on the part of both management and labour to make the experiment a success. If complete cooperation is not forthcoming from both parties, there is no use starting the scheme at all. The fruits of joint consultation arise out of conviction which cannot be created if one of the parties is not in a receptive mood.

The functions of the joint consultation machinery will vary according as whether there is a recognized trade union operating successfully in the establishment or not. Where there is such a trade union, all matters which would, or could, be the subject of collective bargaining should be excluded from the purview of the joint consultation machinery. If this is not done, there will inevitably be conflict between management and the trade union, for the latter is bound to allege that management is trying to extract favourable terms in respect of wages and similar matters by virtually converting the works committee or the joint management council into a company union. Where there is no recognized trade union, it would be difficult to exclude collective bargaining matters from the scope of joint consultation. While this may not be encouraged by the management representatives, it may be forced upon the consultation machinery by the worker representatives. Similarly where there is a recognized trade union and a proper grievance machinery, it may be advantageous to exclude individual grievances too from the scope of joint consultation. Individual grievances are the most difficult and stubborn disputes to settle and there will be no move-on when once they are introduced at a meeting of the joint consultation machinery. Moreover an atmosphere of conflict cannot be conducive to constructive cooperation. Where a proper grievance machinery is not available, it would be difficult to exclude grievances from the works committee. If that should happen, it would be best to entrust the matter to a subcommittee of the works committee so that the principal committee may go on with the main matters for consultation. All this points to the conclusion that joint consultation should follow and not precede the proper functioning of a collective bargaining machinery and of a grievance procedure.

The draft model agreement prepared by the Central Government after tri-partite consultation arranges the functions of joint management councils under three broad heads, namely, consultation, information and administration. The councils are to be consulted by the managements on matters

such as the general administration of standing orders and their amendment, introduction of new methods of production and manufacture involving re-deployment of men and machinery, and closure, reduction or cessation of operations. The subjects on which councils are to receive information from managements include the general economic situation of the concern, the state of the market, the production and sales programmes, the organization and general running of the undertaking, the circumstances affecting the economic position of the undertaking, long-term plans for expansion, re-deployment, etc. The administrative responsibilities to be entrusted to joint councils include welfare measures, supervision of safety measures, the operation of vocational training and apprenticeship schemes, the preparation of schedules of working hours and breaks and of holidays, the payment of rewards for valuable suggestions, etc. Matters for collective bargaining are expressly excluded from the scope of the council's functions.

This is, on the whole, a reasonable list, but it would be helpful to treat it as an illustrative list rather than an exhaustive list. Different establishments may put emphasis on different subjects. It might be useful to mention specifically certain important subjects such as the classification of workers, job evaluation, introduction of incentive systems of payment, establishment of work loads and the undertaking of time and motion studies, plans for rationalization, etc., among the consultative functions of joint councils. That some of these may impinge on collective bargaining matters need not prevent general consultation on the introduction or merits of such systems. Where there is difference of opinion, the matter may have to be settled by collective bargaining.

The mechanics of representation need not detain us. Generally equal numbers of representatives are appointed from both sides, but equality of membership has no particular significance. Except where actual administration is involved, there will be few occasions for any formal decisions or for voting. Since management policies would have been settled and will be in the hands of senior members of the management, the presence of junior managers just to make up the requisite number is not very necessary. It is always an advantage to include in the management team one or more foremen who constitute the first echelon of management in close touch with the workers. The foreman has much influence with his workers and can, therefore, help or hinder any scheme depending on mutual cooperation.

The model rules circulated by the Government of India mention a total strength of 12 members in all representing both sides. This number could be more or less depending on the size of the establishment. Where there is a representative union, that union should nominate the employees' representatives. The First Seminar on Labour-Management cooperation which made recommendations on the composition of councils said that while the employees' representatives should be employees themselves, the representative union could, if it so desired, appoint non-employee members to the extent

of not more than 25 per cent of its quota. This is an unfortunate recommendation which injects the outsider element even into purely internal agencies. All important departments of the establishment should be represented on the council. The management should be represented by the Works Manager and other senior members who can speak authoritatively about management policy.

It has been mentioned earlier that neither works committees nor joint management councils have proved much of a success. The conclusion that one may draw from this is obvious. Neither management nor labour in India is accustomed to joint consultation and is able to appreciate the need for joint consultation or the advantages of making it a success. Joint consultation, like collective bargaining, requires a lot of patience to make it a success and is a process which, by lack of spectacular results, puts off those that pursue it. Had we made collective bargaining a success, we might have found joint consultation comparatively easy. But we have not trained ourselves to bargain effectively and have not developed the art of negotiation and consultation. If, therefore, it is our aim to make joint consultation a success, we must educate ourselves in the methods of joint consultation. That is why heavy emphasis has always been laid on workers' and leaders' education as a means of promoting fruitful consultation.

The I.L.O. study on cooperation in industry sums up "the essential elements which govern the smooth functioning of these institutions" as the degree of trade union organization, the psychological atmosphere of cooperation and the technical training of the parties. Real cooperation, it explains, is possible only if genuine trade unions exist. Cooperation and collective bargaining have different objectives, and while collective bargaining may facilitate the cooperation of the staff with the employer, such cooperation could not be intended as a substitute for collective bargaining. Cooperation is not possible unless there is an atmosphere of cooperation. There should be genuine mutual understanding which will enable the employer to place confidence in his collaborators. Such an atmosphere cannot be created unless the parties acquire, besides a willingness to cooperate, an adequate knowledge of the questions which are the subject of cooperation.

In a country like India where many processes associated with the labour-management relationship have yet to take root, joint consultation, which is a somewhat advanced form of relationship between management and labour, should be viewed with full recognition of its limitations side by side with its eventual potentialities. Even in advanced countries with a long history of collective bargaining and mutual relationship, joint consultation, in its present form, has come into vogue only since the end of the First World War or even later. It must, therefore, be recognized that what has been a difficult experiment even for industrially-advanced countries must be doubly so for a developing country like India with hardly any traditions of collective bargaining. The creation of conditions favourable to the development of strong

and responsible trade unions and to the growth of collective bargaining, unhampered by the inhibitions of adjudication, will pave the way gradually for consultation, cooperation and perhaps even some form of participation as between parties who fully realize the limitations as well as the potentialities of all such experiments.

Consultation, cooperation and participation have, as their ultimate aim, the improvement of production and productivity, the steady enhancement of workers' earnings and interests through the profits of productivity, the promotion of workers' welfare, and the maintenance of a cordial atmosphere of labour-management relations. In short, the experiment is an informed attempt at the promotion of each other's interests through mutual understanding and cooperative endeavour. Joint consultation is but a first step in this direction. How far the parties can travel towards the common goal of mutual prosperity depends entirely on their willingness and desire to make the experiment a success. The result can be brought about only through hard work based on mutual trust and cooperation; it cannot be thrust on the parties through legislation or some outside compulsive force.

WORKERS' EDUCATION

A development of very considerable significance to the trade union movement is the institution of a scheme of workers' education by the Government of India with the active cooperation of the central organizations of employers and workers. The Second Five Year Plan referred to the need for organizing a scheme of workers' education in order to prepare workers for taking on the work of running their trade union organization and administration. As a result, the Government of India sought the assistance of a Ford Foundation Team of experts to formulate a scheme. The object of the Scheme, which resulted from the Team's study and investigation, has been stated to be to "create over a period of time, despite lack of general education, a well-informed, constructive and responsible-minded industrial labour force capable of organizing and running trade unions on sound lines, without leaning heavily on outsiders and without lending themselves to exploitation by extraneous interests." The administration of the Scheme is vested in an autonomous body called the Central Board for Workers' Education, which consists of representatives of workers, employers, educational institutions and Government.

The Scheme provides for training at three levels to produce three types of trained personnel. The first level is the training of Teacher-Administrators, who are selected from among post graduates in one of the social sciences. These candidates are given six months' training and posted to different regional centres where they conduct whole-time training courses of three months' duration for selected industrial workers who, after training, will be designated Worker-Teachers. Trade union officials are also encouraged to join the latter course. The Worker-Teachers, so trained, go back to their

industrial establishments and conduct training programmes at the unit level for the rank and file of workers, largely outside working hours. Suitable syllabi have been evolved for all the three levels of training. A large number of textbooks in the regional languages are being published by the Central Board. The educational arrangements are steadily being strengthened by the addition of modern equipment such as film projectors, tape-recorders, and similar appliances.

The results achieved are quantitatively satisfactory. Till the end of 1962, 135 Teacher-Administrators, 2,525 Worker-Teachers, and 431,992 Workers were got trained. The tempo of training has since been stepped up and a much larger number must by now have been trained. According to an official press release put out in September 1966, more than 8,000 Worker-Teachers and 300,000 Workers were got trained during the Third Plan. A further development has been the incorporation of the Workers' Education Scheme in the syllabus of the technical training institutes.

In a mass production experiment such as this, there is always the risk of a substantial deterioration in the quality of the training. This should be borne in mind and guarded against. It is necessary for the Central Board to arrange for independent evaluation of the results of the training from time to time. This should be in addition to constant evaluation by the Board's own staff. There is no reason why quality cannot be ensured even while quantity is being produced—always provided the authorities in charge insist on a proper balance being maintained between quality and quantity.

This experiment is one of the most important for the building up of a sound and responsible trade union movement. Every encouragement should be given to it by all parties concerned.

CHAPTER X

INDUSTRIAL RELATIONS IN THE PUBLIC SECTOR

THE PUBLIC sector of employment in India is a large and growing one. Broadly speaking, it consists of employment under the Central and State Governments, whether offered directly or through corporations and companies, and under quasi-Government organizations and local bodies. Employment under each of these categories may be of both industrial and non-industrial staff.

Size of the Public Sector: According to the All India Quarterly Report on employment in the public sector for the quarter ending 31 December 1959 issued by the Directorate General of Resettlement and Employment, the figures of employment furnished by establishments responding to the enquiry were as follows:

	No. of establishments	*Total staff employed*
Central Government (excluding Railways)	3,187	8,01,322
State Governments	18,764	26,44,079
Quasi-Government	2,353	6,24,154
Local Bodies	4,679	10,07,949
	28,983	50,77,504

The response to the enquiry was only 94.9 per cent from Central Government establishments, 95.9 per cent from State Government establishments, 96.4 per cent from quasi-Government establishments and 94.2 per cent from local bodies. Estimating the strength of the establishments which had not responded at 1.64 lakhs, the Directorate calculated the total employment in these categories of establishments at 52.42 lakhs (5.242 millions). To this must be added the strength of 11.7 lakhs of the railways. Thus the total strength of the public sector in India (barring employees in Jammu and Kashmir and a few small centrally administered areas) stood at 64.12 lakhs (6.412 millions) on 31 December 1959. The latest available figures of employment in the public sector for the year ending 31 December 1962 show a total employment of 78.1 lakhs (7.81 millions) composed of:

	(lakhs)
Central Government	22.6
State Governments	31.7
Quasi-Government	9.8
Local Bodies	14.0
	78.1

It is proposed here to restrict consideration to the public sector falling under the Central Government, partly because of lack of sufficiently accurate information about the problems of industrial relations in other sectors and partly because of the fact that the problems of the public sector under the Central Government are, by and large, typical of those met with in establishments coming under State Governments, quasi-Government organizations, and local bodies. The total employment under the Central Government as on 30 June 1957 was estimated by the Second Pay Commission as follows:

Department	*No. of employees*
Railways	9,97,262
Posts and Telegraphs	2,04,840
Ministry of Defence (Civilians)	2,70,912
Other Ministries	3,00,556
	17,73,570

These figures have since gone up substantially. For instance, the strength of the railways had already increased to 11.7 lakhs by the end of 1959. The total employment under the Central Government at the end of 1962 was well over 22.6 lakhs.

The employees mentioned above are all direct employees of Government falling under three distinct categories, viz.,

(*i*) employees in establishments covered by the Factories Act, who are also covered by the Industrial Disputes Act, 1947 and the Trade Unions Act, 1926;

(*ii*) employees in establishments such as the railways, posts and telegraphs, civil aviation, etc., other than those employed in workshops and factories, who, though not covered by the Factories Act, come under the jurisdiction of the Industrial Disputes Act and the Trade Unions Act and for that reason have always been grouped with industrial employees; and

(*iii*) those in regular Government offices, that is, civil servants, who do not

come under the provisions of any of the three Acts mentioned above.

The Corporate Wing: Besides these three categories, there is a fourth category, viz., employees of public sector industrial establishments started in recent years which have been organized as corporations and companies. In this category fall the three iron and steel plants of Hindustan Steel, Ltd., the Heavy Electricals, Ltd., Bharat Electronics, the National Coal Development Corporation and similar industrial establishments. This is a rapidly growing sector which employed about 3.5 lakh workers towards the end of 1958. Though the Central Government holds all or the majority of the shares in these establishments, the employees of these concerns are not strictly Government employees. As the activities of these establishments are carried on by the respective Boards of Directors, these establishments are not "establishments carried on by or under the authority of the Central Government" and for that reason fall in the State sphere, and not in the Central sphere, as far as the regulation of industrial relations is concerned.

Establishments of the fourth category do not pose any special problems in regard to industrial relations. All the laws that apply to industrial establishments in the private sector apply to them. Standing orders have to be drawn up and settled in the usual manner. Unions have to be recognized as in any establishment in the private sector, and demands and disputes dealt with in the manner laid down in the Industrial Disputes Act. Works committees have to be set up and managements are expected to give full support to the idea of labour participation in management. In practice, however, there are two differences which arise from the fact that they are large establishments in which much public money has been invested for public purposes. State Governments which are the authority to refer disputes arising in these establishments to adjudication have, by convention, to consult the Central Government before ordering any adjudication. Adjudication of disputes in one unit may have repercussions on other units, sometimes situated in other States, and this can be assessed adequately only by the Central Government. Moreover such a procedure gives the Central Government an opportunity to examine at the very highest level whether the dispute cannot be settled otherwise than by adjudication. Disputes are, however, referred to adjudication without any serious obstruction from Government departments in charge of the management. The other difference relates to the question of bonus payment. In the private sector, the quantum of bonus is[1] normally based on the surplus profits arrived at according to a formula laid down by the Appellate Tribunal. The only departure from that formula permitted is where the profits are abnormally large, as in the case of oil companies, and payments are then limited to a reasonable figure. It has been the Government's contention that this formula should not be applied to Government-owned estab-

[1] This was the position before the enactment of the Payment of Bonus Act, 1965.

lishments, many of which have to base their price structure not purely on market considerations as in the case of a unit in the private sector but on economic policies which the Government wishes to follow in particular fields. The creation, and the quantum, of profits depend in many cases on Government policies. As some of the industrial establishments hold virtual monopolies, it is possible to make large or small profits according to the decision of the policy-makers. Profits may often be made with a view to augmenting public revenues, and losses may sometimes deliberately be incurred with a view to subsidizing consumers. In other words, profits and losses in such cases have little relation to the efforts put in by workers. The Government had, therefore, generally taken up the position that bonus would not be available in public sector establishments but that a fixed bonus might be given so that the total emoluments of employees in the public sector might compare favourably with those of similar employees in the private sector.

This matter came up for consideration before the Bonus Commission. The representatives of the public sector enterprises stated before the Commission that the primary objective of the enterprises was to assist in the economic growth of the country with a view to promoting employment and the well-being of the community in general, that whatever profits ultimately accrued would be utilized for further growth to the ultimate good of the entire community, that most of the industries were of a basic character designed to promote dependent industries in the private sector, that they were paying only a limited return on the capital invested by the Government, that some of them were non-competitive or monopolistic, and that such enterprises should receive a differential treatment in respect of bonus compared with the private sector industry. The Commission held that its terms of reference merely required it to ascertain as to what constituted competitive character in a public sector enterprise. It came to the conclusion that if not less than 20 per cent of the gross aggregate sales turnover of a public sector undertaking consisted of sales of services and/or products which competed with the products and/or services produced and sold by units in the private sector, such undertakings should be deemed to be competitive and that the bonus formula should apply to such units.

Though from the point of view of the applicability of labour laws, there is hardly any difference between the public and private sector industrial undertakings, there is possibly an impression in the minds of the public servants who head the big projects in the public sector that the making of rapid progress with their projects is more important than strict adherence to laws and regulations. The public sector steel plants have come in for a good deal of criticism in this respect. A special enquiry made by the Labour Commissioner of Orissa showed that in the Rourkela plant, "broadly speaking labour legislation has so far been treated with scant respect."[1]

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The report described the various provisions of the labour laws that had been contravened. The provisions of the Factories Act regarding working hours, weekly days of rest, and overtime payment had been disregarded. No record of leave with wages had been kept and leave cards had not been issued to workmen. Units such as the pump house, which had to be separately registered as factories, had not been so registered. Women were found to have been engaged in the night shift contrary to the statutory provision that they should not be employed beyond 7 p.m. No effective arrangements had been made for adequate supply of wholesome drinking water. Workers of blast furnace departments had not been provided with protective equipment. It was subsequently reported that the authorities of the Hindustan Steel, Limited, had "admitted a number of violations in labour laws." Apart from the specific violation of statutory provisions, the enquiry showed that few of the internal agencies normally associated with sound industrial relations had been set up. No consultative machinery or works committees had been established. There was no grievance machinery or grievance procedure. The management was said to be apathetic towards the State conciliation machinery with the result "that almost all the conciliation proceedings so far undertaken had resulted in failure."

The steel plant at Bhilai too has not been free from shortcomings. On 18 February 1960, large crowds collected in the power house area at Bhilai, cut the pipe carrying liquid fuel and took possession of the ash pump. The police had to be called in to save the situation. This was the culmination of a build-up of bad industrial relations over a long period of time. Malpractices in recruiting and promotions, poor working conditions and lack of a responsible trade union were said to be the main causes of the unrest.

In a memorandum prepared by the Indian National Trade Union Congress on labour policy in the Third Five Year Plan, the following passage occurs:

> "Now if we look at the record of implementation of the policies in regard to public sector, we will find that the greatest default is in respect of the labour policies in the public sector. Public sector continues to ignore the several Plan policies. It still goes on enjoying privileges in labour matters which are not available to employers in the private sector. If this state of affairs is to continue, the public sector part of the Plan will find it difficult to succeed. The Third Plan must, therefore, pay special and urgent attention to see that the policies already accepted in the earlier Plans in regard to public sector are further scrupulously implemented."

Main Defect of the Corporate Wing: The problem of the public sector, in so far as it relates to companies and corporations, is essentially one of making managements take a sympathetic and enlightened view of their obligations towards the legitimate aspirations of labour. There is occasionally a feeling that managements in the public sector are less amenable to persuasion and

conviction than the better type of employers in the private sector. This, if true, should be remedied as early as possible. It is quite possible that the complaint might have been true, especially in the early days of the growth of the public sector. Those who head public sector undertakings are, in many cases, civil servants who have not had much to do either with labour or with management problems in the past. In adjusting themselves to the requirements of their new responsibilities, they are inevitably influenced by their past outlook and experience which must have been those of a bureaucrat accustomed to giving orders and being obeyed without demur. Their early attitude cannot but be stiff, if not overbearing, and occasionally unreasonable, if not unjust, in the eyes of labour. The good employer in the private sector has probably at his disposal both the experience and knowledge required to make labour-management relations a success; he has sometimes inherited good traditions, and is, in any case, a shrewd calculator of what is best for his venture, regardless of considerations of false prestige. The lack of leadership of the right type on the side of management is the greatest defect of the public sector at the present stage of its development. This is rapidly changing with experience, but the process will take time.

Directly-managed Sector: The sector that is directly managed by Government is the one that bristles with difficulties in the field of industrial relations. This, as we have seen, is not a homogeneous sector. It includes at one end establishments which employ only pure civil servants and at the other those that employ full-fledged industrial employees like any factory in the private sector. In between these two extremes there are establishments which employ a mixed bag—civil servants, industrial employees, and those who are in fact civil servants but have always been treated as industrial employees. The employees in all these types of Government establishments do not enjoy the same rights in regard to freedom of association, strikes, demonstrations, participation in politics and settlement of grievances and disputes.

As regards freedom of association, trade unions of employees can be formed only by "workmen" as defined in the Trade Unions Act, 1926, that is, by persons employed in trade or industry. As this Act, unlike the Industrial Disputes Act, 1947, does not contain any special definition of 'industry', the words 'trade' and 'industry' are to be understood in their normal sense. The white collar staff of ordinary Government offices have been held not to come under the scope of these expressions. Their associations are not entitled to be registered as trade unions, though because of the difficulties of interpretation a few associations here and there might have been permitted to be registered as trade unions by the various Registrars of Trade Unions. Employees of railways, of posts and telegraphs, of civil aviation and of industrial units such as workshops, ordnance factories, etc., are all workmen under the Trade Unions Act and their organizations are generally registered as trade unions.

As for the application of the Industrial Disputes Act, 1947, the position is

less definite. That Act applies to the prevention and settlement of industrial disputes, which latter term has been defined to mean any dispute or difference between employers and workmen over certain matters. 'Workman' means any person employed in an industry to do certain types of work, and 'industry' has been defined so comprehensively as to include almost any calling of employers and any calling of workmen. Even establishments such as banks, insurance companies, hospitals, etc., have been held to come under this definition. Employees of railways, of posts and telegraphs, and of ordnance factories are all workmen. Thus it is only the employees of the Secretariat type of offices, unconnected with any business, industry or public utility service, that are excluded from the purview of the Industrial Disputes Act.

The right to strike or demonstrate is not now co-existent with the right of association or coverage under the Industrial Disputes Act. The position has changed particularly since 1957 when the Central Civil Services (Conduct) Rules, 1955, were amended so as to include two new Rules 4A and 4B which read as follows:

4A.—No Government servant shall participate in any demonstration or resort to any form of strike in regard to any matter pertaining to his conditions of service.

4B.—No Government servant shall join or continue to be a member of any service association of Government servants

(*a*) which has not, within a period of six months from its formation, obtained the recognition of the Government under the rules prescribed in that behalf, or

(*b*) recognition in respect of which has been refused or withdrawn by the Government under the said rules.

Both these rules were made applicable to non-industrial employees, that is, civil servants, including those under the posts and telegraphs and the civil aviation departments and also to gazetted or other staff in industrial establishments drawing a pay of Rs. 500 or more. Thus these employees were debarred from taking part in demonstrations or strikes and from joining, or continuing to be a member of, any service association or union which had not, within a period of six months from its formation, obtained the recognition of Government or in respect of which recognition had been refused or withdrawn. These rules did not apply to industrial employees and railway employees who were thus not debarred from demonstrations or strikes or from joining unrecognized unions.

Rule 4B of the Conduct Rules dealt with membership of service associations which had not been recognized by Government. Recognition of associations and unions of employees is governed by three sets of rules which

are applicable to non-industrial employees, industrial employees other than railway employees and non-gazetted railway employees. The Central Civil Services (Recognition of Service Associations) Rules, 1959, which are statutory rules framed under Article 309 and clause 5 of Article 148 of the Constitution and which apply to civil servants including employees of the posts and telegraphs and civil aviation departments, stipulate the following conditions for recognition of a service association, viz.,

(*a*) that no person, who is not a Government servant, is connected with the affairs of the Association;
(*b*) that the executive of the Association is appointed from amongst the members only;
(*c*) that the association shall not espouse or support the cause of individual Government servants; and
(*d*) that it shall not maintain any political fund or lend itself to the propagation of the views of any political party or politicians.

These conditions prohibit the association of outsiders with service associations and the maintenance of a political fund. As far as outsiders are concerned, it would appear that this condition was not strictly enforced until the strike by Central Government employees took place in July 1960. Unions of posts and telegraphs employees as also of Central Government employees who are subject to this restriction continued to have outsiders on their executives and it was only after the strike that the necessity to enforce the rules seems to have been realized.

Recognition of unions of industrial employees is governed by a set of non-statutory rules laid down by the Ministry of Labour which include the following conditions:

(*a*) Its membership must be confined to workmen employed in the same industry or industries closely allied to or connected with each other;
(*b*) it must be representative of all workmen employed in that industry or industries;
(*c*) its rules must not provide for the exclusion from membership of any class of workmen referred to in (*b*);
(*d*) suitable provision regarding the procedure for declaring strikes is included in the rules for the constitution of the union;
(*e*) the rules should also provide for the holding of a meeting of its executive committee at least once in six months; and
(*f*) it must be registered under the Indian Trade Unions Act, 1926.

These are not very stringent conditions at all and except for the one relating to the representative character of the union are such as would normally be included in the rules of any union. What constitutes the representative charac-

ter of a union has not been precisely defined except for the suggestion that a minimum of 15 per cent membership should be insisted upon.

The rules for the recognition of unions of non-gazetted railway employees provide for the following conditions, viz.,

(*a*) it must consist of a distinct class of Government employees;
(*b*) all Government employees of the same class must be eligible for membership;
(*c*) it must be registered under the Indian Trade Unions Act, 1926; and
(*d*) no recognized association shall maintain a political fund except with the general or special sanction of Government.

Both the Labour Ministry's rules and the Railways Ministry's rules permit the association of outsiders with the executives of the union concerned. They do not place any restrictions on the espousal of individual grievances. They also permit the maintenance of political funds, without any restrictions under the Labour Ministry's rules and subject to restrictions under the Railways Ministry's rules. In all these three respects they differ from the recognition rules applicable to associations of civil servants.

Except in regard to the employees of the posts and telegraphs and civil aviation departments, the conditions and restrictions mentioned above are not such as to curtail the rights of the employees under the Industrial Disputes Act and the Trade Unions Act. All industrial employees other than railway employees are allowed to enjoy the full range of rights permissible under these Acts, including the right to maintain political funds and to employ outsiders. In the case of railway employees, the only restriction is that the sanction of Government should be obtained for the maintenance of a political fund. Barring this comparatively minor restriction, railway employees also enjoy full rights under both the enactments.

It is only in the case of the employees of the posts and telegraphs and of civil aviation departments that the restrictions imposed by Rules 4A and 4B have served to curtail their rights under the two enactments. Virtually these employees have been taken out of the category of industrial employees and included among civil servants and deprived of the right to strike and demonstrate, to belong to unrecognized unions, to maintain political funds and to have outsiders on their executives.

The position mentioned above was as it stood on the termination of the strike of Central Government employees in July 1960, that is, before the Central Government started consideration of special steps in regard to industrial relations in the public sector.

Though employees of posts and telegraphs and of civil aviation departments would appear to have been deprived of the right to strike and demonstrate—a matter which assumes some importance because of the fact that that right existed in India in the past—similar employees in other countries have

not invariably enjoyed that right. In the United Kingdom, the bulk of postal employees are treated as civil servants and brought under the National Whitley Council. In that country there is no law prohibiting demonstrations and strikes by civil servants though such action might give rise to disciplinary action. In the United States of America, Federal Government employees, including postal employees, are not entitled to go on strike. It is a criminal offence to do so. In Australia, Japan and Switzerland, it is illegal for Government employees to take part in strikes.

Supreme Court on Rules 4A and 4B: The constitutional validity of Rules 4A and 4B of the Central Civil Service (Conduct) Rules, 1955 has been considered by the Supreme Court in two important cases, namely, *Kameshwar Prasad* vs. *State of Bihar*[3] and *Ghosh, O. K.* vs. *E. X. Joseph.*[4] The Supreme Court has held that Rule 4A, in so far as it prohibits participation in "any form" of demonstration, is violative of the rights of Government servants under Articles 19(1)(a) and 19(1)(b) of the Constitution and must be struck down as invalid, but that in so far as the rule prohibits participation in a strike, it is valid because there is no fundamental right to resort to a strike. According to the Court, peaceful and orderly demonstrations fall within the freedoms guaranteed by Articles 19(1)(a) and 19(1)(b) though violent and disorderly demonstrations would not. Prohibition of "any" demonstration would thus amount to prohibition of every demonstration, including peaceful ones, and would, therefore, be violative of the fundamental freedoms.

The right to form an association guaranteed by Article 19(1)(c) does not cover the right to resort to a strike. Thus a rule prohibiting a Government servant from taking part in a strike would be valid though the prohibition could not be held to apply to the taking of an active part in the preparations made for the strike.

As regards Rule 4B, the Court has held that as Government servants are entitled to form associations or unions, only restrictions which can be said to be in the interests of public order and which are reasonable can be imposed on that right. There is no necessary connection between recognition or its withdrawal and public order. Government can withdraw recognition for reasons some of which are not even remotely connected with public order. The restriction imposed by Rule 4B makes the right of association guaranteed by the Constitution ineffective and illusory. Therefore the Supreme Court has held that Rule 4B is invalid and unconstitutional.

Thus Government has been able to salvage out of Rules 4A and 4B only the right to prohibit Government servants from resorting to any form of strike.

Attitude of Employing Departments in the Early Years: In the years following

[3] 1962 I L.L.J 294 [4] 1962 II L.L.J. 615

Independence, there have, from time to time, been suggestions from both workers' and employers' organizations that the public sector should fall in line with the private sector in the matter of the application of labour laws—particularly in the field of industrial relations. Such a suggestion was formally made as late as the Indian Labour Conference of 1958. It has been repeated in one form or another even in subsequent conferences. There is some justification for these complaints though the latter are bound to be exaggerated. It was in 1945 that the Chief Labour Commissioner's organization was set up for dealing with labour-management relations in the Central Sphere. The machinery worked well during the first two years, Central Government departments being only too anxious to take advantage of the services of the Chief Labour Commissioner for the settlement of disputes. Ever since the enactment of the Industrial Disputes Act, 1947, the attitude of the employing Ministries and departments has undergone a steady change. The officers of the Industrial Relations Machinery appear to have come up against difficulties in administering the Industrial Disputes Act in the public sector. During the first 11 years of the operation of the Industrial Disputes Act, hardly 15 or 16 adjudications of disputes were ordered in the entire public sector as against a few thousands in establishments in the private sector. Not even one adjudication was ordered in railways, posts and telegraphs and ordnance factories, apparently owing to opposition from the departments concerned. Opposition was sometimes encountered even to the holding of conciliation proceedings. Under the Industrial Disputes Act, it is obligatory on conciliation officers to hold conciliation proceedings where a dispute relates to a public utility service and a notice of strike has been received and discretionary for them to do so in other cases. More than one Government department has, in the past, asked for exemption from conciliation proceedings. Opposition to conciliation grew much stronger after the setting up of internal negotiating machinery by the more important departments. In 1951, when a negotiating machinery was evolved on the railways, the Labour Ministry issued instructions at the instance of the Railways Ministry that conciliation officers should not ordinarily interfere in disputes on railways and that they should do so "only when the departmental machinery has been tried and is not successful and that it is only when the dispute continues to agitate a large number of workers so as to be rightly classified as an industrial dispute would it be proper for the conciliation officer to follow up the matter under the Industrial Disputes Act." Similarly after the Defence Ministry had set up their negotiating machinery in 1954, the Labour Ministry issued, again at the instance of the employing Ministry, instructions that conciliation proceedings should be initiated only after the parties had availed themselves of the negotiating machinery and if the head of the undertaking welcomed intervention by the conciliation officer. In 1950, the Bombay Port Trust raised similar objections to conciliation and while the Port Trust was eventually brought round to the view that the conciliation machinery could not be prevented from discharging certain obligatory

legal responsibilities, the Labour Ministry had to issue instructions to the industrial relations staff to the effect that "the assistance and good offices of the Chairman of the Port Trust concerned should be sought in as large a measure as they are forthcoming by the conciliation officer," which was only another way of saying that it was necessary to reckon with the opposition of the Chairman in matters of conciliation.

Few of the major employing departments found it necessary in the earlier years to consult the Labour Ministry about their pending differences with their employees. There were complaints from workers' organizations that the Labour Ministry was being avoided by employing Ministries. A suggestion made by the Labour Ministry that an officer of the Industrial Relations Machinery might sit in at meetings between the administration and labour, so that he might watch the course of events and keep the Labour Ministry fully in the picture, was turned down by the Ministry of Railways. The result was that the Labour Ministry found themselves largely cut off from information on the railways. That was also the case in respect of the negotiating machinery set up in the posts and telegraphs department and in defence civilian organizations.

The opposition of Government departments to conciliation, adjudication and other procedures laid down in the Industrial Disputes Act was unfortunate. This attitude was probably due to the apprehension, sometimes even openly voiced, that the possibility of intervention by the industrial relations machinery tended to encourage workers to put forward more and more demands and generally to defy the authority of departmental heads. While there was force in this apprehension, what was ignored was the fact that in the present-day world workers could not be silenced by old-time methods which depended on mere reverence for authority.

It cannot be said that industrial relations in the public sector have been wholly satisfactory all these years. The public sector has had its due share of difficulties and disputes. Even before the large-scale strike of July 1960, there were substantial labour troubles in many spheres including the railways, the ports, the aircraft factory, mints and security presses, etc. In 1956, there were at least three serious disturbances on the railways attended by violence. In July 1957, the employees of the posts and telegraphs department threatened to go on strike and the Second Pay Commission had to be appointed. In ports, labour unrest is a frequent occurrence in recent years. There have been strikes in the Hindustan Aircraft Factory and in the Nasik Security Press. *The Times of India* carried the following comments on the strike in the Nasik Security Press in December 1957:

"Private enterprise and the general public have always been baffled by the Government's failure to treat its own employees in the manner it prescribes for the private sector . . . . It is one thing to denounce a strike and another to refuse even to meet the employees and discuss their demands. It

is hardly logical to run ahead of the times and talk of labour participation in management when in the public sector the employees are denied the elementary facility of a committee for conciliation and negotiation—let alone arbitration."

1964 witnessed quite serious labour troubles including strikes in some of the major units of the public sector such as the Heavy Electricals at Bhopal, the Fertilizer Factory at Sindri, the Hindustan Antibiotics at Pimpri, and the ports at Bombay and Marmugao. Referring to this "unenviable" record of the "Model Employer" in charge of the public sector, the President of the Employers' Federation of India had these remarks to make at the annual general meeting of the Federation in 1964: "Government, as a custodian of the interests of the working classes, are always ready to preach virtues of progressive labour policies and to be actively instrumental in granting bigger and more generous doses of social security, regardless of the cost of the product to the community; yet, Government, as an employer, is reluctant to practise what it has been preaching as an advocate of a Welfare State. Such double standards of social justice as are evidenced in wide disparities between wages and dearness allowance of Government, Central and State, employees as compared to industrial workers in private sector, may, in course of time, make us feel doubtful about the sincerity of Government, if such attitude continues unabated. Government's solicitude and pleadings for higher wages and dearness allowance for our workers in the name of social justice has no merit and meaning when their own employees in various governmental establishments are languishing on fixed dearness allowance unrelated to the fluctuating cost of living.... There is no doubt that the labour legislation of the country is out of tune with the industrial requirements, and it is far too outmoded to fulfil the ambitious planning of our Government to develop our national economy at an accelerated pace to fulfil the laudable targets we have in mind."

Position of Public Sector in Other Countries: In Western countries where traditions in regard to industrial relations have been built up over a long period, no distinction is generally made between the public and the private sectors either in regard to the arrangements for the negotiation and settlement of disputes or in regard to the method of intervention by governmental or industrial relations authorities.

United Kingdom: In the United Kingdom, the whole approach to the settlement of disputes between management and labour—whether in the public sector or in the private sector—is based essentially on free and voluntary negotiations between the parties. The most potent agency in the field of industrial relations for the settlement of differences and disputes, apart from the actual bargaining machinery, is the joint machinery for negotiation and

settlement which has been set up in practically every industry. The joint industrial council is the form that the negotiating machinery takes in most cases. There are also district councils and works committees for regions and individual units. Officers of the Ministry of Labour and National Service attend the meetings of a considerable number of joint industrial councils in the capacity of liaison officers and assist the councils in a variety of ways. The functions of the joint industrial council have been stated in the model constitution broadly as "to secure the largest possible measure of joint action between employers and workpeople for the development of the industry as a part of national life and for the improvement of the conditions of all engaged in that industry." Among its more specific objects are included the "regular consideration of wages, hours and working conditions in the industry as a whole and also consideration of the existing machinery for the settlement of differences between different parties and sections in the industry and the establishment of machinery for this purpose where it does not already exist, with the object of securing the speedy settlement of difficulties."

Most of the statutory enactments pertaining to industrial relations aim at providing a service—whether it be of conciliation or arbitration—which is acceptable to both the parties. State provision for compulsory arbitration was an emergency development of the war. It has since been continued in a modified and restricted form with the consent of both employers and workers under the Industrial Disputes Order, 1951. While this Order provides for compulsory arbitration, it does not prohibit strikes and lock-outs. It also aims at upholding the authority of the voluntary machinery by laying down that a dispute which had been the subject of a decision by joint machinery for the settlement of disputes or of an award under the Conciliation Act, 1896 or the Industrial Courts Act, 1919 (both of which, as mentioned above, providing for procedures of a voluntary character) could not be dealt with under the 1951 Order. There are also other restrictions under the Order. Certain types of disputes which experience has shown to be unsuitable for settlement by compulsory arbitration are excluded from the scope of the Order.

The public sector in the United Kingdom can be divided broadly into two parts, viz., (*i*) the Government industrial establishments, and (*ii*) the nationalized sector. The former, which constitute the traditional public sector and consist of the postal, telegraph and telephone services, the naval dockyards and the ordnance factories are administered directly by Government departments, as in India. The major nationalized industries and services such as electricity and gas, coal-mining, air, rail, canal, some road and sea transport, atomic energy, broadcasting, etc., are administered by public corporations and are governed by the provisions of separate enactments nationalizing them. Over two million persons are employed in public undertakings of an industrial or commercial character. Besides, there are some half a million industrial civil servants under the employ of the Central Government. The

machinery for negotiation between management and labour in Government industrial establishments consists of:

(*i*) Departmental Joint Councils,
(*ii*) Trade Joint Councils, and
(*iii*) A Joint Coordinating Committee.

The Departmental Joint Council deals with matters other than wages and trade questions, that is, mainly domestic matters such as the interpretation of departmental regulations, welfare and other questions on which the trade union side might wish to make representations. Wages and trade questions which are often common to various departments are dealt with by Trade Joint Councils serving the entire trade or industry in the public sector. The Joint Coordinating Committee is for all Government industrial establishments and is responsible for the settlement of general service questions affecting Government industrial employees generally. All the three negotiating agencies consist of the official side and the trade union side in equal strength, the official side including a representative appointed by the Minister for Labour and National Service.

Industries in the nationalized sector which are run through statutory corporations are, for the present, hardly distinguishable from establishments in the private sector in so far as industrial relations are concerned. The same type of negotiating machinery as obtains in the private sector applies also to the corporations. The negotiating rights of employees in the nationalized industries are, in general, secured by the provisions of the relevant Nationalization Acts which require public corporations to enter into negotiations, or seek consultation, with organizations which appear to them appropriate for the purpose of joint negotiations. A study made by the I.L.O. says that "the machinery (for negotiation) remains essentially the same as under private ownership."

Both in Government industrial establishments and in public corporations the democratic bi-partite machinery works at all levels—at the level of the department, of the trade and of the public sector as a whole—and representatives of the Ministry of Labour form an integral part of the negotiating machinery. According to the *Industrial Relations Handbook* published by the United Kingdom Government, the Industrial Relations Department of the Ministry of Labour "is responsible for advising other Government Departments on industrial relations questions in general and in particular in respect of their responsibilities for wages and working conditions either on contracts or in respect of direct labour in their employment." [5]

In the United Kingdom, public opinion exerts great pressure on the contending parties and often influences the decisions of the parties in regard to

[5] *Industrial Relations Handbook*, 1955, p. 122.

the continuance or otherwise of a major strike. For instance, in the case of the Bus Strike in London which started on 5 May 1958 and ended on 21 June 1958, the dispute was referred to the Industrial Court for voluntary arbitration. When the award of the arbitrator was received, the workers' union refused to accept the award and started the strike. The Minister of Labour refused to intervene and made the following statement:

> "Voluntary arbitration by the Industrial Court has always rightly been regarded as the final stage in the settlement of a dispute. I regret that the award has not been so regarded in this case by one of the parties. I cannot take any action which would have as its effect a variation of the Industrial Court award and to do so would be in effect to question the award of the Court and this I am not prepared to do."

The union had eventually to withdraw the strike on substantially the same terms as those granted under the award. The strike in the London docks in the same year was termed as 'unofficial' as it was started without the support of the unions concerned. After the strikers agreed to call off the strike, the Minister of Labour appointed a Committee of Enquiry to look into the causes of the original strike in the Smithfield Market which set in motion the dock strike. While the Court of Enquiry has no power to enforce a settlement, it may make recommendations upon which a reasonable settlement of the dispute can be based. Normally parties would be reluctant to reject such recommendations.

United States of America: The public sector in the United States of America is comparatively unimportant, the avowed object of the Federal Government being to reduce as much as possible all activities of a business or commercial character. Most of the activities in the public sector are largely auxiliary to other governmental services such as the Military, the national power system, the Tennessey Valley Authority, etc. Federal undertakings include, however, production of some amount of goods required for national defence, the operation of some public power projects, public housing, a limited amount of transportation and storage facilities, etc. In the field of electric power, only a small percentage of the output in the United States is owned by the Federal Government. The most important industrial and commercial undertakings at the State or local levels include the operation of public utilities such as local transportation, gas, electricity, etc. The total number of employees in the public sector at all governmental levels was a little over a million in 1954. This accounted for about two per cent of the non-agricultural employment in the entire country in 1954.

In the limited public sector, governmental functions and powers are exercised either through government departments or through specially-constituted bodies designated as corporations. Both in the private and in the public

sectors, freedom of association is fully guaranteed. In the private sector, there is a minimum of governmental interference in the relationship between employers and workers. The method of settlement of disputes obtaining in the country has been described in the following terms in a statement made by the United States Government:

> "This aversion to governmental interference in collective bargaining applies with equal force to Government intervention in strikes. At the Federal level, there is no compulsory arbitration of disputes, even those which may be deemed to endanger the public health and safety. The national statutes which contain provisions relating to disputes affecting the public health and safety merely postpone the effective date of the strike which is deemed to be covered. Although some States have enacted statutes requiring compulsory arbitration in disputes involving public utilities, there have been Federal and State Court decisions in some cases which have raised questions of the constitutionality of such statutes but their constitutionality has yet to be decided finally by the United States Supreme Court. Mediation and conciliation are the customary extent of Government participation in the settlement of disputes."

While the freedom of both the parties in the private sector is almost unlimited, that is not so in the public sector. The Labour-Management Relations Act, as settled by the Taft-Hartley Act of 1947, made it unlawful for any employee of the United States Government or any agency thereof, including wholly-owned Government corporations, to participate in any strike. The penalty laid down was mandatory discharge, forfeiture of civil service status, and ineligibility for re-employment by the Government for three years. But Public Law 330—84th Congress—enacted in 1955 goes much further and provides that no person shall accept or hold office or employment in the Government of the United States or any agency thereof, including wholly-owned Government Corporations, who participates in any strike or asserts the right to strike against the Government of the United States or such agency or is a member of an organization of Government employees that asserts the right to such strike. Violation of this law is a felony punishable with fine or imprisonment or both. While employees in the public sector suffer from these limitations, they are permitted to present their case before Agency Wage Boards and Civil Service Commissions. As regards other means of protection, a statement by the United States Government runs as follows:

> "Where wages are established by the legislative process, representatives of Government workers' unions are free, like other citizens, to promote legislation dealing with wages, civil service and other laws affecting conditions of employment, to participate in public hearings held by legislative committees on such matters and to publicize their views, their organizational

and numerical strength being factors which give weight to programmes which they promote to the benefit of their members."

France: In France the public sector is extensive but is not highly concentrated except in a few fields. The mining industries are almost entirely State-owned. Electricity, gas, water, and health services are also almost entirely in the public sector. Most of the concerns producing aircraft bodies and engines, as also factories for the manufacture of explosives, are in the public sector. Transport by rail, sea and air is generally handled by mixed undertakings though the State has a predominant interest in most of them. For instance, rail transport is in the hands of the French National Railways in which the State owns 51 per cent of the shares. In 1952, the State employed some 965 thousand persons of whom 817 thousands were permanent or temporary administrative civil servants and 148 thousand permanent or temporary technicians and labourers.

The general position with regard to the settlement of industrial disputes is that every dispute, which has not been settled through mutually-agreed conciliation proceedings, must be brought before a Regional or National Conciliation Board. Where conciliation fails, the parties may (not must) submit the dispute to arbitration. There is also an intermediate stage of mediation which may be invoked at the request of any one of the parties or on the initiative of the Minister of Labour or by agreement between the parties. Appeals against the decisions of arbitrators lie to the Central Arbitration Tribunal.

Normally-speaking, workers in public undertakings, as in private undertakings, are governed by the civil law. The Civil Service Regulations do not apply to them. The principle that employees in public undertakings are governed by the civil law is, however, subject to important exceptions. Some public undertakings endowed by statute with a special status, e.g., the Bank of France, Air France, the French National Railways, the French National Coal Board, etc., are not governed by the civil law. While such undertakings are generally excluded from many of the enactments applicable to the private sector, disputes between staff and management remain within the jurisdiction of the ordinary courts.

The system of collective agreements and the legal provisions relating to compulsory conciliation and voluntary arbitration do not cover the statutory public undertakings. In their case the staff regulations have statutory sanction. Although created on the initiative of the State, the majority of the staff regulations have been prepared in close collaboration with the occupational organizations of the employees in such undertakings. It may also be noted that the management boards of nationalized undertakings are mostly tripartite in character with representatives of workers having at least one-third of the total number of seats on such boards. Further, the Joint Staff Committees and their Subsidiary Committees in public undertakings have con-

siderable power in regard to all matters concerning staff. The staff also benefit from special social security schemes. In addition, the conclusion of agreements in respect of wages between the managements of public undertakings and the most representative occupational organizations is permitted; but the existence of such agreements does not limit the validity of Ministerial decisions or orders in the matter. Employees in public sector undertakings not governed by any special regulations are on the same legal footing as those in private undertakings.

Canada: In Canada, the Federal Government undertakings include the Canadian National Railways, the Trans-Canada Airlines, postal, telegraph and telephone services, the Broadcasting Corporation, the Bank of Canada and the Canadian National Steamship, Ltd. Big hydro-electric undertakings are owned and administered by Provincial Governments. The Federal Government controls also many miles of canals. The Government controls more than 30 crown corporations.

The provisions of the Industrial Relations and Investigation of Disputes Act in respect of freedom of association and collective bargaining apply to all corporations established to perform any function or duty on behalf of the Government of Canada. Crown corporations are generally free to join employers' organizations and their employees are free to join trade unions and to bargain collectively on the same footing as workers in the corresponding private sector. Unions representing employees of crown corporations generally have rights to collective bargaining with the management of the corporations in the same way as in private industry.

The procedure for the settlement of disputes includes compulsory conciliation which, in effect, means that the right to strike or lock-out is suspended during the period of the conciliation. If a conciliation officer reports failure, the Minister may appoint a Board of Conciliation and Investigation. The parties are, however, under no obligation to accept the Board's recommendations. Though there is a legal provision that every collective agreement must contain a specific procedure for the final settlement by arbitration or otherwise of all differences that might arise between the parties with respect to the interpretation or alleged violation or application of the agreement, there is no provision for compulsory arbitration of disputes as such. All these provisions apply alike to both the public sector and the private sector.

Australia: In Australia, the main types of public undertakings and services provided by the Commonwealth Government are the postal, telegraph and telephone services, telecommunications, broadcasting, rail transport, air transport, shipping, banking, public works and construction, Government defence production and munitions establishments, and atomic energy and other scientific and industrial research. Various other industries and services come within the management of State Governments. Of a total of 720,400

employees of the Commonwealth, State and Local Governments, 205,500 employees were in the Commonwealth service including administrative employees.

Workers in the public sector are free to join ordinary trade unions on the same basis as workers in the private sector. While there are no restrictions in this respect, a number of unions consist only of persons employed in the public sector. The Commonwealth Public Service can be divided into two sections, viz., the career section consisting of clerical, administrative and professional employees and the non-career section consisting of tradesmen, artisans and similar types of employees. The conditions of service of both groups are controlled by the Commonwealth Parliament—the first group coming within the scope of the Public Service Act, 1922-54 and the second within the scope of a number of other statutes such as the Naval Defence Act and the Supply and Development Act. All these Acts and the regulations made under them prescribe conditions of service for employees who come within their scope. The Public Service Arbitrator operating under the Public Service Arbitration Act, 1920-55 has the responsibility of determining wages and conditions of service for any section of the employees of the Commonwealth Government. The decision of the Arbitrator is subject to appeal to the Commonwealth Court of Conciliation and Arbitration.

Although voluntary conciliation and arbitration are encouraged, the predominant method of prevention and settlement of industrial disputes and of regulation of wages and working conditions is compulsory conciliation and arbitration. An official report says: "Over the greater part of Australian industry, including the public sector, wages and working conditions are effectively regulated mainly by statutory systems."

Federal Republic of Germany: In Germany, industrial or commercial undertakings operated or controlled by Government fall into the following groups:

(1) public undertakings directly administered by the State or constituted as independent undertakings, e.g., railways, postal services, banking and insurance and shipping,
(2) state monopolies like alcoholic drinks,
(3) private companies in which an interest is owned by the public authorities.

The German Public Service consists of three categories:

(1) civil servants or officials;
(2) salaried employees;
(3) labourers.

In the case of the first category, wages and other conditions of employment

are determined by public authorities. Associations of civil servants cannot enter into collective agreements, but they have the right to make representations to the administrative services, the Government and Parliament in support of the claims of their members. Further, the Civil Service Act of 1953 provides that the Central Organizations of the appropriate trade unions must be consulted when general regulations governing the conditions of employment of officials are being drawn up. The Act also makes provision for the setting up of a Federal Staff Board of 7 members, 3 of whom are to be civil servants nominated by the associations. This Board cooperates in the preparation of general regulations on conditions of employment and in the consideration of the claims of officials. Salaried employees and labourers in the public sector are subject to the same rules as workers in the private sector if no special regulations are applicable to them as a result of any law or ordinance. Their conditions of employment are to be governed by collective agreements.

The settlement of conditions of employment in the public sector through collective agreements has been a very general practice. In 1950, a collective agreement was entered into between the Federal Government and the trade unions regarding the classification of federal employees. In 1954, a collective agreement for railway workers was entered into between the Federal Railways and the Railwaymen's Trade Union. In 1953, out of 2,709 collective agreements reported to the Federal Ministry of Labour, 257 concerned the public services. The Minister of Labour may, at the request of one of the parties to an agreement, give it binding force and extend its scope to cover persons who are not parties to the agreement.

The conciliation and arbitration system is governed by the Control Council Law of 20 August 1946. This Act authorizes the establishment by agreement of machinery for settling conflicts. Where a dispute cannot be settled through agreement, the parties may refer it either to a Labour Court or to an Arbitration Commission consisting of a Chairman appointed by Government and assessors representing the employers and employees. The Labour Courts have jurisdiction in disputes over rights under existing arrangements; that is to say, they deal with the interpretation and implementation of collective agreements. The Arbitration Commissions deal with industrial disputes involving claims for an alteration in existing arrangements. The Arbitration Commissions can only act with the consent of both parties to disputes. Awards are not binding unless the parties have agreed to accept them. An accepted award has the same force as a collective agreement.

Sweden: Public Undertakings in Sweden are of three kinds:

(1) state-owned public corporations like the posts and telegraphs and the state railways;
(2) state monopolies like the tobacco monopoly;

(3) state-owned and state controlled undertakings under private Law like the state timber industry.

The personnel of the state monopolies and state-owned corporations and companies, except for the state and municipal employees who are subject to official oath, have full freedom of association and negotiation. The salaries and wages of such personnel are determined by collective agreements arrived at as a result of negotiations between the state negotiating board for the state business enterprises and the negotiating board for public-owned business enterprises on the one hand and the concerned trade unions on the other. However, the employment conditions of salaried employees working for state business enterprises or for the Government administration are generally fixed by statute and executive decrees.

Public salaried employees who are not subject to the official oath have the same right as other employed persons to take direct action and their employers have the right to apply a lock-out. However, in the case of public salaried employees who are subject to the official oath, the right to take direct action is restricted and strikes in the ordinary sense are prohibited in their case.

A considerable number of agreements have been concluded in recent years between public undertakings (or Government agencies responsible for their management) and the trade unions concerned regarding the setting up of advisory enterprise councils, consisting of an equal number of representatives of labour and management.

In Sweden attempts are made to settle disputes through direct negotiation and agreements between the parties to the dispute. If no agreement is possible, the dispute is referred to State Conciliators for conciliation. Under the Industrial Disputes (Mediation) Act, 1920, Government conciliation officers are required to mediate and arrange for a meeting between the two parties, if requested to do so by either of the parties. However, acceptance of the conciliation findings is entirely optional and the parties are always free to resort to direct action.

Disputes about questions relating to rights are to be settled by direct negotiation between the parties or, failing that, through the intervention of the Labour Court consisting of a Chairman and six assessors.

With a view to encouraging workers to refrain from resorting to direct action, certain special rules were incorporated in the Right of Association and Negotiation Act of 1936 and certain special facilities were granted to workers' organizations and to their counterparts on the employers' side if the workers' organizations promised to abstain from direct action and fulfilled certain conditions.

Under the Basic Agreement of 1938, which was revised in 1947, a permanent bi-partite Committee, the Labour Market Board, has been set up to deal, *inter alia*, with questions pertaining to discharge of workers and labour disputes affecting essential services and with disputes arising out of restrictions

upon the right to resort to direct action. Further the Labour Market Board has been given the power to examine any proposed direct action which concerns the vital interests of the community, if requested to do so either by one of the parties to the dispute or by a public authority affected by the dispute.

The Second Pay Commission's Suggestions: The Second Pay Commission has devoted considerable attention to the shaping of industrial relations in the public sector coming under the Central Government. Referring to the operation of Rule 4B of the Conduct Rules, which extended to about 30 per cent of the total staff under the Central Government, the Pay Commission has said that it seems "inappropriate, if not unreasonable, that the right to form associations of unions having been conferred by the Constitution on all citizens, an employee should become liable to disciplinary action merely by being a member of an unrecognized association, irrespective of the means and objects of the association or its activities."[6] It has recommended that membership of an unrecognized association should not as such be a disciplinary offence. Regarding recognition of associations, the Commission says that the rules framed by the Government appear to be stringent and that it would be advisable to make them more liberal.

As regards demonstrations and strikes, the Commission has come to the conclusion that it is wrong for public servants either to resort to strike or to threaten to do so. It is not proper for persons entrusted with the responsibility for operating services essential to the life of the community to seek to disorganize and interrupt those services. In Indian conditions in which there is often a possibility of eruption of indiscipline in an ugly form, a strike or even demonstrations by Government servants cannot but be a factor making for indiscipline generally. We have earlier referred to the Supreme Court's ruling on the constitutional validity of Rules 4A and 4B.

At the same time, the Commission has held that if a proposal that Government servants should give up the strike weapon is to have a just basis, and is to secure reasoned acceptance by them, there should be set up an adequate machinery for negotiation, redress of grievances and settlement of disputes, and provision for arbitration of differences that cannot be resolved otherwise. The Commission has then made detailed recommendations regarding the type of machinery to be set up and the nature of disputes that would lend themselves to arbitration.

The more important employing Ministries have already set up quite useful negotiating machinery. The Railways Ministry set up in 1951 a three-tier permanent negotiating machinery. In each railway representatives of the recognized union discuss first with the District or Divisional Officer and then with the General Manager all outstanding issues except individual cases.

[6] *Report of the Second Pay Commission, 1957-59*, p. 540.

Matters not so settled are taken up by the recognized national federation with the Railway Board. Differences which cannot be settled even at that level may then be referred to an *ad hoc* tribunal consisting of one representative of the Railways and one of the staff presided over by a neutral chairman. It is, however, open to the Government to accept, reject or modify an award of the tribunal. In actual practice, the tribunal has consisted of a single person, viz., a retired High Court Judge. In the posts and telegraphs department and in the ordnance establishments under the Ministry of Defence, there is a somewhat similar machinery. Negotiations are held at fixed intervals at divisional, circle and national levels in the posts and telegraphs department. The implementation of decisions arrived at is supervised by a standing committee presided over by the Director General, Posts and Telegraphs. In ordnance establishments, there is machinery at the level of the unit, of the Director General, and of the Ministry.

The Pay Commission has recommended the setting up of a system of Whitley Councils for the purpose of negotiation and cooperation. The machinery would have at its apex a National Whitley Council composed of senior officials of the various employing departments and representatives of the employees concerned. There would similarly be departmental councils and, where necessary, even regional or unit councils. While departmental matters would be discussed and disposed of in departmental councils, there are various matters concerning pay and allowances and other conditions of service which affect employees of all departments and cannot, therefore, be discussed fruitfully in departmental councils. These have necessarily to go to the National Whitley Council. A committee of the National Council will deal with matters peculiar to industrial employees.

The Commission has stated that provision for compulsory arbitration is a "necessary complement to a joint machinery for negotiation." Emphasizing the point that provision for compulsory arbitration has not reduced the utility of Whitley Councils in the United Kingdom, the Pay Commission has quoted with approval the view that "once the employees give up the strike weapon, and there is no provision for compulsory arbitration, they would have, in the last analysis, to accept as fair and equitable whatever the Government considered to be so." Following the British pattern, the Commission has recommended that compulsory arbitration should be restricted to pay and allowances, weekly hours of work, and leave. Matters concerning employees above the level of Class II employees and individual cases are to be excluded from the scope of compulsory arbitration.

Proper Approach Essential: The development of a proper approach to industrial relations in the public sector is of vital importance to public administration generally and to the successful completion of the Five Year Plans in particular. This would not be just another case of adjustment of relations between a big employer and his workers; it has many other implications.

First of all, whether the State can succeed in being a model employer or not, it is certain that the policies which the State follows as employer will greatly influence industrial relations in the private sector and that the State's own hands will, in turn, be forced by the policies imposed on, or obtaining in, the private sector. What is good for the private sector cannot be bad for the public sector, and this was abundantly made clear by private employers during the debate on industrial relations at the Indian Labour Conference held in 1960. An important employers' representative referred to "the mechanical adjustments between wages and the price level that were indiscriminately being proposed by different industrial tribunals for workers in the private sector without realizing the effect of such awards on the price level and on public sector undertakings." If the State takes special powers for dealing with industrial relations in the public sector, there is bound to be, sooner or later, a similar demand from employers in the private sector unless it can be fully proved that the circumstances of the two sectors are so totally different as to warrant different treatment. When the Government started examining whether strikes in the public sector should not be banned because of the paralyzing effect of large-scale strikes on the economic life of the nation, the private sector was not slow to put forward a similar plea on behalf of establishments engaged in essential supplies and services. Moreover, a sullen and disgruntled staff of over two millions under the Central Government cannot obviously pull its weight in making planning a success. It is, therefore, incumbent on the State to evolve a system which will be considered fair by the employees themselves and which does not curtail any existing rights or privileges more than is absolutely necessary to prevent large-scale interference with the economic life of the nation.

The strike of Central Government employees in July 1960 provided the occasion for a reconsideration of the Government's approach to industrial relations concerning Government employees. Though the strike was only partial and of short duration, it affected many services provided by Government agencies including railways, communication services, ordnance factories and even some purely civilian Government offices. As to the reasons that led to the strike, the complaint of the employees' organizations was that it was precipitated by the stubborn attitude of the Government and their refusal to negotiate in a realistic manner with the employees' organizations. The employees' organizations had put forward the following six demands, viz.,

(*i*) that dearness allowance be paid according to the formula evolved by the First Pay Commission and not by the Second Pay Commission;
(*ii*) that a minimum wage for Government employees be fixed in the light of the principles enunciated at the 15th Indian Labour Conference;
(*iii*) that there should be no curtailment of any existing amenities, rights, and privileges;
(*iv*) that a standing body consisting of equal representatives of organized

labour and of the concerned Ministries, with a neutral chairman, be set up to settle disputes relating to scales of pay and other service conditions;

(v) that disputes should be referable to arbitration at the instance of either party and that recognition of unions should be settled by a referendum; and

(vi) that Rules 4A and 4B of the Conduct Rules and allied rules be withdrawn.

There was a certain amount of negotiation of these demands, as a result of which the employees' organizations later on claimed that they virtually gave up all demands except the one relating to dearness allowance. Even here they said that they were prepared for some measure of compromise but that they would not agree to postponing the issue of neutralization of the increased cost of living indefinitely on the strength of vague assurances. In particular, the employees' organizations were of the opinion that even the existing level of cost of living justified a further minimum increase in the quantum of dearness allowance payable. The Government's position was that they would not be prepared to agree to any enhancement of dearness allowance which was not in accordance with the recommendations of the Pay Commission.

Allegations have been made that the strike was a political one. The organizations which supported the strike have claimed that it was a purely economic one. The representative of one central organization of labour said that "there would have been no strike if Government had, instead of summarily turning down the demands of the employees, agreed to abide by the procedure laid down in the Code of Discipline for the settlement of disputes." The representative of another central organization of labour said that the strike was a purely economic one as could be seen from the fact that while the national income had increased and productivity risen, the real wages of workers had gone down. Whatever the intentions of the sponsors of the strike, it is certain that had the strike succeeded in full measure, it would have brought the economic life of the nation to a standstill and made the position of the Government wholly untenable.

Recent Developments: Since the termination of the strike of Central Government employees, the Central Government have been thinking of

(i) excluding outsiders from the unions and associations of Central Government employees;

(ii) prohibiting strikes in all offices and establishments of the Central Government;

(iii) establishing a negotiating machinery on the pattern of Whitley Councils with a National Whitley Council at the apex and such departmental and regional or unit councils as might be deemed convenient; and

(iv) providing for compulsory arbitration of disputes relating to certain important matters.

They have also been considering which of these should be incorporated in legislation and which prescribed as a condition of recognition.

So long as public interests are adequately safeguarded, there would seem to be merit in approximating the conditions of work and employment in the public sector to those prescribed for the private sector. There would also be advantage in adhering as closely as possible to the requirements of the Conventions and Recommendations evolved by the International Labour Organization even if the country has not technically ratified some of them. Conventions 87 and 98 of the International Labour Organization have a direct bearing on some of the proposals under the consideration of the Government. Convention 87 concerns Freedom of Association and Protection of the Right to Organize. It applies to all workers including civil servants and employees of other Government establishments and departments. Only in the case of the armed forces and the police can national laws restrict the guarantees provided for under the Convention. Under the Convention, workers can establish and join organizations of their own choosing (Article 2). Workers' organizations have the right to draw up their constitutions and rules, to elect their representatives in full freedom, to organize their administration and activities and to formulate their programmes (Article 3). The organizations cannot be dissolved or suspended by administrative authority (Article 4). They have the right to establish and join federations of their own choice (Article 5). Article 8 contains the significant statement that while workers and employers and their respective organizations shall respect the law of the land, "the law of the land shall not be such as to impair, nor shall it be so applied as to impair, the guarantees provided for in this Convention." Though the Convention has not been ratified by India, an assurance has been given that the spirit of the Convention will be observed in practice. The reported proposals of the Government to ban outsiders from the executives of unions, to prohibit membership of unrecognized unions (which is already laid down under rule 4B of the Conduct Rules), and to prohibit affiliation of Government employees' organizations to other labour organizations to which unions of non-Government employees are also affiliated might, to varying degrees, be claimed to offend against the spirit, if not the letter, of the provisions of this Convention.

Convention No. 98 which concerns the application of the principles of the right to organize and to bargain collectively gives further protection to workers' organizations for their proper functioning. Workers are protected against anti-union discrimination. Any stipulation by the employer that a worker shall not join a union or that he shall relinquish membership of a union is forbidden (Article 1). An employer is not entitled to dismiss or otherwise prejudice a worker by reason of union membership or because of

participation in union activities outside working hours. Workers' organizations are protected against acts of interference or domination by the employer (Article 2). Machinery for voluntary negotiation is to be encouraged and promoted (Article 4). The guarantees provided for in the Convention can be restricted by national laws or regulations in the case of the armed forces and the police (Article 5). Article 6 says that "this Convention does not deal with the position of public servants engaged in the administration of the State nor shall it be construed as prejudicing their rights or status in any way." This Article would seem to apply only to public servants engaged in the administration of the State, that is, the senior and important officials, or at the most all officials, who are immediately concerned with the administration and not the employees engaged in various capacities in the services provided by the State. In the case of the former, some curtailment of the right relating to anti-union discrimination and collective bargaining would seem possible, but this should not be done so as to impair the guarantees afforded by Convention 87. The Indian Government member, referring to this Article, said at the Conference which adopted the Convention that "Government should be entitled to restrict the right of public officials to take part directly or indirectly in subversive activities on the understanding, however, that freedom of association as such was still guaranteed to every official. Officials in particular who, by reason of their rank or duties, had to ensure the application of Government policy could not join organizations of a political character." The principle finally accepted by the Working Party and the Committee of the International Labour Organization responsible for the text of the Convention was that "the present Convention did not deal with public officials with respect to the guarantees laid down in the convention and did not prejudice their position either way."

The question arose whether Article 6 of Convention No. 98 did not conflict with the guarantees provided for in Convention No. 87. An unofficial opinion emanating from sources close to the International Labour Office was:

"Convention No. 87, which laid down the general principle of freedom of association, did not provide for derogations with regard to public officials. Being the basis of the new instrument which the Committee proposed to adopt, Article 11 of that Convention placed States Members under an obligation to take all necessary and appropriate measures to ensure to workers and employers the free exercise of their right to organize.

The present proposed Convention dealt only with one particular aspect of the right to organize, in other words, the protection of workers against acts of discrimination in their employment. Consequently, it would be possible to apply the provisions of Convention No. 87 to categories of persons who would not be protected by the present proposed Convention. In other words, the proposed Convention might not apply to certain groups

of persons protected by Convention No. 87. Hence there was no juridical incompatibility between the two texts."

Unwilling to face the volley of adverse criticisms fired by interested trade union leaders that freedom of association was being denied to Government employees, the Government seems to have abandoned its earlier intention to enact legislation banning outsiders from unions of Government employees in favour of an arrangement whereby recognition would be denied to a union which had outsiders on its executive. While this may mollify internal opposition to some small extent, it is difficult to see how from the point of view of safeguarding freedom of association the new arrangement is, in substance, an improvement on the earlier proposal. Workers' organizations are not formed merely for the sake of bringing into existence a club or a debating society; they are meant to be active organizations working for the amelioration of the conditions of the working classes. This objective can be achieved only if a workers' organization secures recognition and the right to collective bargaining. To deny recognition, which is otherwise merited, is effectively to deny the organization the means of attaining its objective. The right of association would be as effectively denied by recognition being refused as by the refusal of registration itself. There are, however, other aspects of the outsider problem which merit careful consideration.

Exclusion of Outsiders from One Sector Alone Not Justifiable: Government's original intention to exclude outsiders only from unions of Government employees, but not from unions of employees in the private sector, suffers from the infirmity of inconsistency. The reasons for the exclusion of outsiders from unions of Government employees are presumably that such employees should not be exposed to exploitation by political or other undesirable interests and that development of healthy trade unionism will be retarded by extraneous influences and control. If these indeed are the considerations justifying the exclusion of outsiders from unions, they would apply in the same measure to all unions, irrespective of whether they are in the public sector or in the private sector. Can the State look on with equanimity at the exploitation of workers by self-seeking outsiders in the private sector any more than it can at the exploitation of employees in the public sector? If the argument be that outsiders are necessary in the private sector in order to prevent victimization of workers by employers and that there is no such need in the public sector, this would be a sweeping condemnation of all employers in the private sector even as it would be a blanket approval of all employers in the public sector. Employees who have suffered prosecutions, dismissals and punishments on a large scale as a result of strikes in the public sector would be hard put to believing any such claim. In fact, if strikes are to be avoided in the public sector and disputes settled by negotiation and adjustment, that is all the greater reason why skilful and experienced negotiators

are required to assist employees in the public sector. Such men, we have often been told, can be found in adequate numbers only among outsiders. If, therefore, outsiders are needed in the conditions obtaining in India, there would not be sufficient justification for differentiating between the public and private sectors. Outsiders are either a blessing or a curse; they cannot be a blessing for one sector and curse for the other.

Justification for Excluding Outsiders from Both Sectors: All these arguments point to only one conclusion, namely, that no distinction can be made between the public and private sectors in the matter of outsiders. This, of course, is no argument for permitting outsiders in either sector. Enough has been said elsewhere to show what while some outsiders have rendered good service to the trade union movement in the past, outsiders, as a whole, have done a great disservice to the movement in keeping it in a state of perpetual dependence on them. In most cases, the outsider supports himself not through a salary paid to him by the union but by other devious means which are not always open or above board. A substantial reduction in the number of disputes might tend to blur the value of the outsider to the union, and he can, therefore, ensure his future only by keeping the pot of discontent ever boiling. Where trade union leadership is sought not for personal gain but for furthering the political or ideological interests of a party, the maintenance of a disturbed state in the field of industrial relations may be even more necessary. This game has gone on not for a few years but for over forty. The problem of the outsider has a significance in India—sinister in the opinion of some—wholly different from any which other countries might have experienced. Here a set of people, otherwise unconnected with industry, enter the field of industrial relations year after year, largely uninvited, ostensibly as honorary workers but actually as persons determined to make it a long-term career, with or without other activities. They are not engaged or invited by existing trade unions; they found little empires for themselves even as one who wields a sword calls for a conquest. Some wish to make it the means of their ambitious careers; others want to use it as the spring-board for something bigger and better. The exclusion of such self-seeking trade union leaders from the movement is both urgent and imperative. It might be argued that exclusion of outsiders through statutory regulation might offend against the I.L.O. Convention. We have already placed restrictions on the number of outsiders; what we would be doing would be a mere extension of the policy already pursued. Moreover, what is right and possible in normal conditions may not be so when special circumstances exist. Freedom of association acquires meaning and content only if those who aspire for that right are free agents, able and willing to exercise independent judgment. The exercise of rights arises only when a person is in a position to exercise them; not when he is kept down by other forces and influences. So for such time as may be necessary to free trade unions from the clutches of unscrupulous outsiders,

it would be necessary to exclude outsiders statutorily from trade unions. The prohibition of outsiders can be withdrawn after trade unions have become self-reliant and strong.

Classification of Public Sector Employees: In the conditions obtaining in India, there would seem to be a clear case for dividing public sector employees into three distinct categories and providing for the handling of their industrial relations problems in different ways. These categories might well be: (*a*) civil servants, (*b*) quasi-industrial employees, and (*c*) industrial employees. The term "civil service" is often considered synonymous with the permanent group of non-military employees of the national government, but in this sense it would include both non-industrial and industrial employees of the Government. It is not in this comprehensive sense of non-military employees that we are here using the expression "civil servants". A definition of the term "civil servant" in the intended sense was attempted in the Labour Relations Bill, 1950. The term was there defined to mean "a person who is a member of a civil service of the Union or an All-India service or a civil service of a State or holds any civil post under the Union or a State," but excluding the employees of various establishments owned or managed by or under the Central or a State Government such as the railways and other forms of transport, ports, docks, wharves or jetties, telegraph, telephone, wireless telegraph or broadcasting establishments, mints, printing presses, ordnance factories, public works establishments, irrigation and electric power establishments, plantations, mines, factories, etc. Notwithstanding these exclusions, the employees of certain controlling offices of such establishments, e.g., the Railway Board, the Director-General of Posts and Telegraphs, the Director-General of Ordnance Factories, the Chief Engineers and Superintending Engineers, etc., were to be treated as civil servants. While the precise definition of the term "civil servant" is a matter of administrative convenience, the principle is that all employees connected with the administration of the sovereign power of government should be brought under this definition.

The industrial employees of the Government, for our purpose, should be those in factory and allied employment. In dealing with the arrangements for industrial relations, it might not be practicable to make a distinction between those, like ordnance factories, which are directly administered by Government departments, and other factories set up and administered as corporations and public limited companies. It is the nature of the activity carried on by the industrial establishment and not its structure that should decide the pattern of industrial relations in the establishment.

The quasi-industrial establishments will include all those establishments like the railways, posts, telegraphs and telephones, civil aviation, irrigation and power systems, and similar establishments which look like civil service establishments but think like industrial establishments.

The precise lines of demarcation between the three groups—civil servants,

quasi-industrial employees and industrial employees—should be a matter for legislative definition.

Provision for Civil Servants: Any attempt on the part of civil servants to strike and to bring the machinery of government to a standstill should be a matter of grave concern to the Government as well as the public. That would amount to an insurrection against public authority. The National Labor Relations Act, 1947 (Taft-Hartley Act) of the United States lays down in unambiguous terms that "it shall be unlawful for any individual employed by the United States or any agency thereof including wholly owned Government corporations to participate in any strike. Any individual employed by the United States or by any such agency who strikes shall be discharged immediately from his employment and shall forfeit his civil service status, if any, and shall not be eligible for re-employment for three years by the United States or any such agency." President Roosevelt who, more than anybody else, during the New Deal period, helped trade unionism to build up to its present pre-eminent position, gave his opinion regarding the position of government employees as follows: "All government employees should realize that the process of collective bargaining, as usually understood, cannot be transplanted into the public service. It has its distinct and insurmountable limitations when applied to public personnel management. The very nature and purposes of government make it impossible for administrative officials to represent fully or to bind the employer in mutual discussions with government employee organizations. The employer is the whole people, who speak by means of laws enacted by their representatives in Congress. Accordingly, administrative officials and employees alike are governed and guided, and in many cases restricted, by laws which establish policies, procedures or rules in personnel matters."

Under Indian conditions there is even greater justification for banning strikes by civil servants. The political foundations of the State are only gradually being laid and the economic foundations are as yet weak and in the formative stages. Any prolonged thwarting of the authority of the State, and the consequent paralysis of the economic life of the nation, cannot but shake the very foundations of the State. So it is suggested that legislation should be undertaken to make strikes by civil servants unlawful. Any civil servant who goes on strike should mandatorily be removed from service and rendered ineligible for Government employment for three or five years. He should also be liable, on conviction, to prescribed penalties. We have mentioned earlier that the prohibition of strikes by Government servants does not offend against the fundamental freedoms guaranteed by the Constitution.

While such a drastic statutory provision would be fully justified, it increases all the more the responsibility of the State to ensure that adequate alternative arrangements are made available to ensure justice to civil servants in the matter of the terms and conditions of employment. These arrangements

should be three-fold. First, a Pay Commission should, from time to time, be appointed to investigate and recommend the terms and conditions of service of civil servants. Two such Commissions were set up in the past with a ten-year interval in between. But they were set up only when Government was faced with a critical situation and left with no alternative but to resort to such a course. If Government does not wish to be faced with critical situations, it must do the right thing at the right time. It would, therefore, be an advantage for Government to adopt and announce a definite policy that a Pay Commission would automatically, and without any external pressure, be set up at defined intervals. Government can choose what this interval should be, but it should not be too long. From the date a Pay Commission's recommendations are given effect to, not more than five to six years should elapse before the next Commission is set up. This will ensure that inclusive of the time required for the Commission's investigations and Government's decisions thereon, civil servants can expect to get revised terms, where revision is justified by the changed circumstances, once every seven or eight years. This is a reasonable period having regard to the fact that in industry terms and conditions of employment are materially changed once in three years or so.

There can be no appeal from a high-powered Pay Commission's recommendations and Government must proceed to implement them without any substantial modifications. It might, however, be as well for Government to secure the support of Parliament by placing before it the Commission's report and Government's own orders thereon so that, if need be, a discussion might ensue.

Negotiating Machinery: The terms and conditions of employment of civil servants will thus be regulated by the recommendations of the Pay Commission, as accepted and implemented by Government. These will be supplemented by a whole series of supporting rules and regulations framed under the Civil Service Regulations and other relevant rules on the subject. But even so a large number of incidental and ancillary matters can give rise to much tension in employer-employee relations. To take care of such situations a bi-partite negotiating machinery of the type of Whitley Councils is necessary and should be set up. Much discussion has taken place on this subject, the main stumbling block being the jurisdiction of the arbitration machinery forming the apex of the negotiating machinery.

The negotiating machinery should be in three levels corresponding to the main local office, the office of the head of the department or Ministry, and the central coordinating organization. At these negotiations there should be no attempt at reopening any of the matters settled as a result of the Pay Commission's report. Individual grievances also should not be dealt with. All other matters of a collective nature, such as disputes over percentages of higher grade posts, applicability of particular allowances to groups of officials, avenues and principles of promotion, etc., not covered by the Pay Com-

mission's recommendations, as well as interpretation and application of such recommendations, should be open for discussion.

It may not be possible to settle all such matters in the bi-partite committees. It should be freely recognized that any unresolved issues will be remitted to voluntary arbitration. As the main terms and conditions of employment have already been laid down as a result of the Pay Commission's recommendations, these subsidiary issues cannot have any serious repercussions on the finances of the State. That being so, there would be no valid objections to arbitration without limiting the arbitration to any defined subjects. Emulation of the British practice in this respect will not be fruitful. In Britain there is no provision for the setting up of a Pay Commission from time to time, and naturally unresolved disputes over pay and allowances, weekly hours of work and leave have to be remitted to arbitration. But that is not the case in India. The proper course for us would be not to touch the matters settled by the Pay Commission and to consider all other collective matters as coming within the scope of voluntary arbitration.

The setting up of Pay Commissions at regular well-settled intervals, the evolution of an adequate and effective negotiating machinery, and the making of provision for the arbitration of issues left over from negotiation are measures calculated to promoting satisfaction and contentment among civil servants. In the absence of such measures civil servants are bound to be won over and exploited by unscrupulous elements in the political and trade union leaderships of the country.

The exclusion of outsiders advocated earlier will itself ordinarily be sufficient to ensure that unions or associations of civil servants do not get mixed up with other trade unions. Even a positive ban on affiliation with outside organizations would be justified in order to ensure that the no-strike injunction on civil servants is not thwarted by outside compulsion.

Provision for Industrial Employees: The industrial employees of the public sector, whether in ordnance factories or in factories attached to other departments or in the regular public limited companies and corporations, should be treated on a par with industrial employees of the private sector. True, some of these employees, particularly in ordnance factories, are employed in vital sectors of the economy bound up with the safety of the State, and strikes by such employees might be highly prejudicial to the welfare of the State. The remedy for this is to treat such vital establishments as public utility services or economically important industries. Compulsory adjudication will have to be retained for such industries for some time to come. If disputes are referred for adjudication, strikes would become illegal.

There are no advantages in bringing industrial employees within the scope of Pay Commissions. On the other hand, Pay Commissions might even tend to mix up the terms of employment appropriate for civil servants with those applicable to industrial employees, try to effect a reconciliation between the

two sets of conditions, and in the end fail to carry conviction to the parties concerned. The conditions of employment of industrial employees must approximate to those of corresponding employees in the private sector and not to those of civil servants. Public sector steel mills must go with private sector steel mills. Ordnance factories must offer terms comparable to those paid in private sector establishments in engineering, clothing, leather and other industries. Public sector factories must, therefore, be brought within the scope of wage boards, adjudications, etc., sanctioned for private sector industry. Strikes, as such, cannot be banned, though there will be limitations on strikes in terms of the Industrial Disputes Act.

Provisions for Quasi-Industrial Employees: The employees of Government departments such as railways, posts and telegraphs, civil aviation, etc., render services vital to the economic life of the nation and cannot, therefore, be treated on a par with industrial employees proper. The nature of the work of many of these employees is not very different from that of civil servants; their conditions of employment are no more onerous. And yet for a long time past they have been treated as if they were industrial employees. Another important matter to be borne in mind is that the numbers involved are very large. The number of railway employees alone is about 12 lakhs. So comprehensive arrangements rather than piecemeal decisions are called for to deal with such large numbers.

Railway, postal and similar employees have built up powerful trade unions and are in a position to exert a large amount of pressure on the governmental authorities concerned. With so much of organizing capacity and of power of compulsion behind them, it would be inadvisable to mix them up with civil servants who cannot, in any case, be permitted to take part in strikes. At the same time, they should not be exposed to the procedures applicable to industrial employees or to the temptations arising from the power of combination. Most of the establishments under consideration are monopolies and any undue concessions yielded in compulsory adjudication or similar compulsory measures would clearly be at the expense of the public. It is, therefore, necessary that a close watch be kept over the expenditure on the terms and conditions of service of these employees. This can be ensured only if a separate Pay Commission is set up for these employees on lines similar to those of the Pay Commission for civil servants. There are several advantages in having separate Pay Commissions for these two sets of employees. The considerations for the fixation of wages are different in the two cases. Moreover if both sets of employees are dealt with by the same commission, there will be a tendency to apply, and to expect, common standards for all. Civil servants belong to the lower and upper strata of the middle and upper classes while the bulk of the railway and similar employees belong to the working classes. The treatment of the two would have to be different, and this would not be possible if the same commission dealt with both sets of employees.

As these employees are covered by the Industrial Disputes Act, it is necessary to give legal and binding effect to the recommendations of the Pay Commission under that Act.

For these employees also there should be bi-partite consultation and arbitration on lines similar to those suggested for civil servants. Departments like the railways and posts and telegraphs already have effective bi-partite consultative arrangements. These could be strengthened and formalized. All matters not periodically settled as a result of the recommendations of the Pay Commission, barring individual grievances, should be open for discussion at meetings of the joint committees. Unresolved issues should be remitted for arbitration.

In the case of quasi-industrial employees, there should be no legal ban on strikes or demonstrations. There should also be no special restrictions regarding their trade unions. Since most of them are, or will be, public utility services, there will be provision for notices before strikes. If in particular cases formal adjudication is found necessary, strikes during the period of the adjudication would be illegal under the Industrial Disputes Act.

There is, however, one line of thinking which says that Government employees are in a class by themselves and that they should be isolated from the general labour movement of the country because of their obligations to the public and also because of the special status of the employer. This is a proposition which cannot be accepted in its entirety. To the extent to which the life of the nation may be affected or even paralyzed, special arrangements would be necessary and justifiable; the interests of the community as a whole cannot be sacrificed for those of a section of the community. But the status of the employer cannot by itself have any significance. More will be said of this principle of industrial democracy in a later chapter.

CHAPTER XI

MAJOR PROBLEMS — WAGES AND BONUS

Categories of Disputes: Disputes relating to wages, bonus, and personnel matters, particularly reinstatement of dismissed workers, constitute the bulk of disputes that lead to work stoppages. The following figures of work stoppages due to these categories of disputes, expressed as percentages of the total number of work stoppages, illustrate this conclusion:

Year	*No. of stoppages*	*Percentage of stoppages on account of disputes relating to*			
		Wages	*Bonus*	*Personnel*	*Others*
1921	396	42.2	18.9	17.2	21.6
1926	128	46.9	3.1	24.2	25.8
1931	166	41.6	1.2	23.5	33.7
1936	157	61.7	0.7	15.3	22.9
1941	359	60.7	2.5	15.3	21.5
1946	1,629	37.1	4.8	17.2	40.8
1951	1,070	28.1	6.5	28.1	37.3
1956	1,103	28.3	8.8	39.7	23.2
1958	1,514	30.5	11.5	33.0	25.0
1960	1,200	27.8	8.8	28.5	34.9
1961	1,314	30.4	6.9	29.3	33.4
1962	1,474	30.2	12.3	25.2	32.3

Before we take up consideration of some of the major issues leading to industrial disputes, a brief review of the trend of disputes might be useful. The percentage of work stoppages due to wage disputes has gone down since wages came to be fixed statutorily during and after the Second World War, first through compulsory adjudication and later on through wage board decisions. Stoppages due to bonus disputes and personnel matters have gone up since Independence. That bonus payments are not purely *ex gratia* and that workers can lay claim to such payments and raise justiciable disputes got firmly established only after Independence. Hence the preoccupation of trade unions with bonus demands, bonus disputes and stoppages due to them. It is only after Independence that trade unions have increased in number considerably and become more exacting, more militant in the midst of rival trade unionism, and more intent on self preservation than in the past. This new vigour and anxiety have been reflected in the interest they have taken in

getting individual grievances remedied. A union's popularity and following are closely bound up with its ability to secure redress of individual grievances. A union, struggling in the midst of rival trade unionism, cannot afford to take too close a look at individual grievances and must be prepared to support even untenable ones. Disputes relating to personnel often lead to work stoppages; they force the hands of both the union and the employer.

Wages: Wages, more than any other single demand of workers, have been responsible at all times—in depression as well as in prosperity, in peace as well as in war—for the largest extent of industrial unrest. This is understandable because wages constitute the main return for the labour invested by the worker. In an under-developed economy with its vast unemployed manpower and the ever-present temptation on the part of the employer to take advantage of the law of supply and demand in the matter of hiring labour, workers have to be ever vigilant. During periods of depression when business is at a low ebb and profits are fast dwindling, the worker invariably wages a losing battle against wage reductions and retrenchments. This is a far more difficult task than the securing of an increase in emoluments in times of prosperity, for when profits are large, the employer cannot afford to lose them by quarrelling with his workers over wages. The employer, in turn, has to be very vigilant about wage increases. Wages have invariably a tendency to rise; they can be lowered only at the peril of a major conflict. The arguments which the worker employs to secure a wage increase, such as that the cost of living index has gone up or that productivity has increased, are conveniently forgotten when these trends are reversed. Thus an employer who can afford to pay a substantial wage increase in a period of prosperity can never be sure that he is not being permanently weighed down with a burden which may prove to be crushing when business tends to become slack. The wage bill is an important element in the cost of production in a number of industries. It is usual to think in terms of labour costs rather than wage costs because of a number of fringe benefits allowed to workers which have also to be financed by the employer. The percentage of labour costs on the ex-factory value of the product has been estimated at 25 in the case of cotton textiles, 11 in the case of cement, 21 in the case of jute and 10 in the case of sugar. The employer would naturally resist any substantial addition to these costs.

The employer is not the only party who has to keep watch over rising labour costs. In a planned economy the State is vitally interested in keeping down the prices of many key commodities. Coal is perhaps the most important of them. Any undue increase in the price of coal is bound to increase fuel costs in practically every industry. An industry like iron and steel, of which coal and coke are dominant raw materials, or a service like the railways which run mostly on coal would be greatly affected. Similarly, if through increased manufacturing costs the prices of textiles, of cement or of fertilizers

go up appreciably, that should cause concern to the Government. It is obvious, therefore, that in a planned economy the State cannot sit back and watch unconcerned the conflicts between employers and workers over wages.

The Minimum Wages Act, 1948: Though the Royal Commission on Labour and several State Labour Committees, particularly those of Bombay, Bihar and U.P., considered the fixation of minimum wages desirable, though not everywhere practicable, and suggested a machinery for the fixation of minimum wages, no action was taken on such proposals until 1948 except in the United Provinces, where minimum wages were fixed in the textile industry at Kanpur and in electricity undertakings throughout the Province. The first systematic statutory regulation of wages was brought about by the Minimum Wages Act, 1948. That Act was prompted by the Minimum Wage-Fixing Machinery Convention, 1928 of the International Labour Organization. According to the Convention, every member-State ratifying it undertakes to create and maintain machinery whereby minimum rates of wages can be fixed for workers employed in trades or parts of trades in which no arrangements exist for the effective regulation of wages by collective agreement or otherwise and wages are exceptionally low. The Minimum Wages Act, 1948 applied, in the first instance, to 13 employments including agriculture. The remaining employments are in such unorganized industries as woollen carpet making or shawl weaving, rice mills, flour mills or dal mills, tobacco manufacturing including bidi-making, oil mills, stone-breaking or stone-crushing, lac manufactories, etc. The appropriate Government is empowered to add to the schedule, and State Governments have added various industries—sometimes even a well-established industry like the cotton textile industry—to the schedule of coverage. The Act provides a procedure for the fixation of minimum wages. Tri-partite Advisory Committees have to be set up for making enquiries and advising the Government concerned on the level of wages to be fixed. If the appropriate Government feels that it has enough material for fixing minimum wages, it can, without setting up an advisory committee, publish its proposals for the information of persons likely to be affected by them and fix rates finally after taking into account any objections or suggestions received. The Act does not, however, give any clue as to the principles which should govern the fixation of minimum wages. Should the rates fixed be need-based so that the minimum wages in the least-profitable employments will be the same in the same region without regard to the paying capacity of the establishments or should they be based on the paying capacity of the establishments concerned without regard to need? If the rates should be need-based, what should be the considerations for calculating the need?

In the absence of indications in the Act itself of the principles that should govern the fixation of minimum wages, the committees set up by State Governments for recommending minimum wages have evolved their own principles.

The committees set up by the Bombay Government have adopted the cost of minimum subsistence as a guide for fixing minimum rates of wages. The size of the family for calculating the cost of minimum subsistence has been reckoned at three consumption units representing the worker, his wife and two children. Owing to lack of data, little has been done to estimate the financial position of the establishments concerned or the cost of living in smaller places. These factors have been taken into account only in the case of well-established industries like the textile industry situated in big cities. In the case of certain employments, the minimum wages have been fixed at double the corresponding figure for August 1939. This means that no effort has been made to neutralize the increased cost of living fully or even adequately. In the case of certain other employments, the committees have recommended the minimum basic wages awarded by the Industrial Court for the cotton textile industry together with an equal amount as the cost of living allowance. This means, for instance, that in Bombay where the minimum basic wages of cotton textile workers were formerly Rs. 30 per month, the total minimum wages for workers in the covered establishments would be Rs. 60 as against a textile worker's wage a few years ago of Rs. 120. In the Punjab, the Advisory Committee for Local Authorities accepted "the subsistence plus level" as the basis. The Advisory Committee for Agricultural Implements, Machine Tools and General Engineering accepted the norms evolved by the Indian Labour Conference, 1957, as a guide but gave due weight to the paying capacity of the industry and its competitive capacity in relation to industry in other States. In West Bengal, the Committee for Tea Plantations accepted the Fair Wages Committee's concept of minimum wages, namely, that such wages should provide also for some measure of education, medical requirements and other amenities. From the low rates finally recommended, it is open to doubt whether there has been any translation of the principles into practice. The Committee appointed in Orissa for revising minimum rates of wages for employment in tobacco purported to calculate minimum wages on the basis of the recommendations made by the 15th Session of the Indian Labour Conference but eventually recommended minimum wages keeping in view the prevailing rates of wages and the capacity of the industry to pay. In the old Travancore-Cochin State, the Committee for the Plantation Industry accepted the recommendations of the Fair Wages Committee, viz., that minimum wages should provide for education, medical requirements and amenities.

Though many of these Advisory Committees have kept in view various concepts such as the bare subsistence level, the subsistence plus level, the Fair Wages Committee's level, the standard prescribed by the Indian Labour Conference, etc., most of the wage fixations have, in fact, been restricted by considerations of the capacity of the industry to pay and the prevailing rates of wages. That accounts for the consistently low level of wages fixed for most establishments covered by the Minimum Wages Act.

Some of the minimum rates of wages fixed by certain State Governments in the year 1958 were as follows:

State	*Employment*	*Rate*
Bombay (Vidarbha)	Bidi-making	Rs. 1.56 to 1.69 per 1,000 bidis (A person generally makes 800 bidis in a day)
Kerala	Municipalities	Rs. 50 per month
"	Oil mills	Rs. 1.75 per day
West Bengal	Rice mills	Rs. 1.12 to 1.49 per day
"	Bidi-making	Rs. 1.60 to 2.25 for 1,000 bidis
"	Local authorities	Rs. 60 to 62.5 per month
"	Tanneries	Rs. 2.15 per day
"	Plantations	Rs. 1.54 per day for men and Rs. 1.13 per day for women

These rates have since changed only by small amounts. The rates fixed in earlier years in these and other States were even less. The bulk of the minimum rates of wages in force at the end of 1962 varied from Re. 1 to Rs. 2 per day. Rates of the order of Re. 1, Rs. 1.25, Rs. 1.50 and Rs. 1.75 are very common. There are a number of rates even lower than one rupee. The rates in agriculture are particularly low, but a somewhat redeeming feature is the fact that the number of earning members in an agricultural family is larger than in an industrial family. An official note prepared by the Ministry of Labour in July 1965 for discussion at a seminar on the problems of agricultural labour held in New Delhi from August 2 to 4, 1965, said that "the States where the daily minimum wage for agricultural labour has not yet touched the 100 paise (one rupee) mark include Andhra Pradesh, Gujarat, Madhya Pradesh, Madras, Orissa and Rajasthan." It would be interesting to compare these rates fixed under the Minimum Wages Act with the amount of Rs. 80 fixed as minimum wages for Central Government employees by the Second Pay Commission in 1959 and the amount of Rs. 125 claimed by employees' organizations as the minimum that should have been fixed in accordance with the norms evolved at the 15th Session of the Indian Labour Conference. It would seem, therefore, that though certain principles have broadly been kept in view by advisory committees, the prevailing low level of wages and the limited paying capacity of the scheduled establishments have prevented any large-scale increases in the prevailing rates of wages. Marginal adjustments have, no doubt, been made and units grossly under-paying their workers have been obliged to pay according to the prevailing rates. Some small increases have also been given from time to time. Even so it is difficult to say that the principles recommended by the Fair Wages Committee for fixation of minimum wages, so often freely accepted and quoted, have been fully implemented.

One distinct gain to workers by the application of the Minimum Wages Act is the statutory provision made, as part of the Minimum Wages Rules, for the regulation of hours of work, the weekly day of rest, overtime payment, etc. These safeguards were almost wholly absent before the application of the Minimum Wages Act.

Employers have not been slow to react to the increased financial burdens cast on them by the various provisions of the Minimum Wages Act. There has been a tendency to greater mechanization in order to cut down labour costs. The possibility of the introduction of a bidi-manufacturing machine at one time gave rise to much disquiet. The principle of equal wages for men and women, confirmed by an award of the Labour Appellate Tribunal in 1956, has led to the replacement of female labour by male labour in certain sectors of employment. There are, of course, various other reasons[1] too for the reduction in the number of women workers in certain industries, particularly textiles (cotton, jute and silk). The percentage of women to total number of workers declined from 11.25 in 1950 to 10.45 in 1956. Where the rates fixed have varied from State to State, as in the case of the bidi industry, there has been a tendency on the part of employers to transfer their business from one State to another.

A general assessment of the results of the Minimum Wages Act made by the Labour Bureau of the Central Government is as follows:

"The Minimum Wages Act has resulted in the establishment of a stable system of wage-rates for different occupations in the scheduled employments. The enforcement of the Act has enabled the workers to get reasonable wage-rates and better their service conditions. This has also helped the labourers in other industries to demand and obtain higher rates of wages and other benefits as are enjoyed by the workers in the scheduled employments. It has also contributed its share for the maintenance of industrial peace and afforded security of income to the labourers The employees engaged in scheduled employments located in urban areas have been assured of the minimum wages fixed under the Act and sometimes higher wages than the prescribed minimum wage have been paid. But as regards rural areas, the position is not known."

The Fair Wages Committee: Though the Minimum Wages Act was the first in the field and its operation has been briefly mentioned right up to recent years, what has probably affected wage fixation most in the post-war period is the report of the Fair Wages Committee set up under the chairmanship of the present writer towards the end of 1948. That report has firmly laid the foundations of the principles that should govern wage fixations at the hands of industrial tribunals, wage boards and similar agencies. These principles have been generally accepted and approved by such high judicial authorities

[1] Padmini Sen Gupta: *Women Workers of India*, 1960, chap. II

as the Labour Appellate Tribunal, High Courts and the Supreme Court. Though the governing principles are no longer in doubt, there have been difficulties in evolving norms for the implementation of the principles—difficulties which have been enhanced by the lack of capacity to pay in the case of many employments. However, these difficulties, in no way, detract from the merits of the principles evolved by the Fair Wages Committee.

The Fair Wages Committee examined the concepts of minimum wage, living wage and fair wage. The minimum wage, the Committee said, should provide not merely for the bare sustenance of life but for the preservation of the efficiency of the worker. For this purpose, the minimum wage must also provide for some measure of education, medical requirements and amenities. The Committee considered the claim that the minimum wage should be equated to a bare subsistence wage and rejected it on the ground that the efficiency of the worker had to be preserved and that this was not possible by merely sustaining life. A worker had to be enabled to live like a human being. According to the Committee, an industry which is incapable of paying the minimum wage has no right to exist. The living wage, on the other hand, should enable the male earner to provide for himself and his family not merely the bare essentials of food, clothing and shelter but a measure of frugal comfort including education for the children, protection against ill health, the requirements of essential social needs, and a measure of insurance against the more important misfortunes including old age. As the attainment of a living wage might not immediately be possible, the concept of the fair wage which an industry can be expected to pay its workers assumes importance, the fair wage being fixed at a suitable level between the minimum wage and the living wage. The report says that "while the lower limit of the fair wage must obviously be the minimum wage, the upper limit is equally set by what may broadly be called the capacity of industry to pay." Between these two limits the actual wages will depend on a consideration of the following factors:

(*i*) the productivity of labour;
(*ii*) the prevailing rates of wages in the same or similar occupations in the same or neighbouring localities;
(*iii*) the level of national income and its distribution; and
(*iv*) the place of the industry in the economy of the country.

Of these, the prevailing rates of wages and the capacity of industry to pay are the most important. According to the Committee, the method of comparison with the prevailing rates of wages is sound in countries where the bargaining power of labour is strong and the wages paid in at least some industries or sectors of industries are adequate. But in countries like India where labour has until recently been weakly organized, "such a process can only mean the comparing of one unsatisfactory rate of wages with another

equally unsatisfactory rate." And yet the prevailing rates must at least serve as the starting point in any scheme of wage fixation. The capacity of industry to pay is the main limiting factor in the fixation of fair wages. The capacity which has to be ascertained is that of the industry as a whole in a region, a fair cross-section of the industry being scrutinized for the purpose. In deciding whether an industry has the capacity to pay a particular level of wages, the objective of fixation of fair wages should not be lost sight of, viz., that employment at existing levels is not only maintained but, if possible, increased. The level of wages fixed should enable the industry to maintain production with efficiency. The wages fixed should not be very much out of line with wages in other industries in the same region as otherwise there will be movement of labour from one industry to another and consequent industrial unrest.

In deciding upon the requirements of a family for food, clothing, etc., the standard family is to be reckoned as one requiring three consumption units and providing one earner. This standard was suggested by the Committee because it found that though families often exceeded the size warranted by three consumption units, the total number of earners in those cases also increased correspondingly. The Committee, therefore, found that it was necessary for one wage-earning unit to support only three consumption units. For changes in the cost of living, the endeavour should be to compensate the lowest categories of wage earners to the extent of 100 per cent of the increase in the cost of living and higher categories at a somewhat lower rate. The machinery for fixation of fair wages is to be wage boards of tri-partite pattern. The Committee felt that there should be progressive improvement in the fair wages but that such improvement would depend on improvement in the economic conditions of the country and of the industry concerned.

The First and Second Five Year Plans: The First Five Year Plan was evolved in an atmosphere of comparative realism. The rapid rise in prices which had taken place during and immediately after the world war warned the planners of the dangers of inflation. The Plan, therefore, rightly said that "on the side of wages any upward movement at this juncture will further jeopardize the economic stability of the country if it is reflected in costs of production and consequently raises the price of the product. For workers too such gains will prove illusory because in all likelihood they will soon be cancelled by a rise in the general price level, and in the long run the volume of employment may be adversely affected."

Regarding the principles of wage fixation, the Plan said that all wage adjustments should conform to the broad principles of social policy which meant that disparities of income should be reduced to the utmost extent, that the claims of labour should be dealt with liberally in proportion to the distance which the wages of different categories of workers had to cover before attaining the living wage standard, that the process of standardization of wages should be accelerated, that differentials for various jobs should be maintained

at the minimum levels justified by circumstances and that full and effective implementation of the minimum wage legislation should be secured during this period. The Commission added that though certain broad principles which might help in the regulation of wages had emerged as a result of the labours of various Commissions and Committees, they did not form an adequate practical basis for a uniform policy in determining wage rates and that a tri-partite machinery should evolve in as precise terms as practicable the norms and standards which should guide wage boards or tribunals in settling questions relating to wages.

The Second Five Year Plan started by saying that "a wage policy which aims at a structure with rising real wages requires to be evolved," but did little to evolve such a policy. After pointing out that workers' right to a fair wage had been recognized, it said that in practice it had been found difficult to quantify the fair wage. "A major difficulty experienced in the fuller implementation of the principle of fair wage is the drag exercised by the marginal units in determining the wage structure." The Plan said that one way of making such units more viable was their amalgamation with larger units, voluntarily if possible, and compulsorily if need be, consistent with the requirements of a decentralized economy. How far this was practicable, the Plan did not care to enquire though it recognized that there were difficulties. The Plan proceeded to say that "improvement in wages can result mainly from increased productivity," meaning presumably that there was no great scope for increase in wages, at least in the well-organized sector of industry, unless productivity increased.

The 15th Session of the Indian Labour Conference: The method of calculation of the minimum wage, including the norms for such calculation, received attention at the 15th Session of the Indian Labour Conference held in 1957. The Conference came to the following conclusions:

(1) In calculating the minimum wage, the standard working class family should be taken to consist of three consumption units for one earner; the earnings of women, children and adolescents should be disregarded;
(2) the minimum food requirements should be calculated on the basis of a net intake of 2,700 calories as recommended by Dr. Aykroyd for an average Indian adult of moderate activity;
(3) the clothing requirements should be estimated at a *per capita* consumption of 18 yards per annum which would give for the average worker's family of four a total of 72 yards;
(4) in respect of housing the norm should be the minimum rent charged by Government in any area for houses provided under the Subsidized Housing Scheme for low income groups; and
(5) fuel, lighting and other 'miscellaneous' items of expenditure should constitute 20 per cent of the total minimum wage.

Referring to these norms as "guide lines" for fixation of the minimum wage for industrial workers, the Conference recognized that there were cases where difficulties might be experienced in implementing those recommendations. It proceeded to say that "wherever the minimum wage fixed went below the recommendations, it would be incumbent on the authorities concerned to justify the circumstances which prevented them from adherence to the norms laid down."

The Second Pay Commission, 1959: Certain aspects of the norms adopted at the 15th Session of the Indian Labour Conference became the subject of acute controversy with the publication of the report of the Second Pay Commission. Various organizations of Central Government employees, purporting to base their calculations on the norms recommended by the 15th Session of the Indian Labour Conference, arrived at figures ranging from Rs. 110 to Rs. 137 per month for the minimum wage payable to employees and put forward their demands accordingly. The Pay Commission said that "the Labour Conference recommendations in question mark a notable departure from the past and from the widely accepted idea of a minimum wage as an instrument for ensuring to workers a rate of remuneration which the industry concerned is capable of paying." The Commission observed that the minimum remuneration worked out according to the formula recommended by the Indian Labour Conference might be of the order of Rs. 125 as compared to Rs. 52.50 which, with some exceptions, was the upper limit of minimum wages fixed under the Minimum Wages Act. As the *per capita* income at current prices during the nine years ending 1957-58 had reached a maximum of only Rs. 291.50, the total income of a family of four members would, at best, be only Rs. 1,166 per annum, i.e., Rs. 97 p.m. A minimum wage of the order of Rs. 125 was, therefore, excessive as "a minimum wage pitched above the level of the *per capita* income and intended for very wide application is obviously one beyond the country's capacity." The Commission said that though a net intake of 3,000 calories had been mentioned in one of Dr. Aykroyd's bulletins as the daily nutritional requirement of an average man doing moderate work, the Labour Conference had in mind only a net intake of 2,700 calories. Dr. Aykroyd's balanced diet which provided for 10 ounces of milk and an egg per day, besides meat and fish, was clearly impracticable as the milk and egg supply of the country fell far short of these requirements. After taking expert evidence, the Commission worked out a diet having a calorific value of a little over 2,600 calories and with a composition which provided for 15 ozs. of cereals as against 14 ozs. suggested by Dr. Aykroyd and 4 ozs. of milk as against 10 ozs., with no fish, meat or eggs. The cost of such a vegetarian diet was worked out at Re. 0.56 per unit. Thus for three units the expenditure was calculated at Rs. 52 per month. Adding the expenditure on clothing, housing and other requirements the Commission calculated the total expenditure of a standard family

corresponding to a consumer price index of 115 (1949=100) at Rs. 79.73.

Since the publication of the Pay Commission's Report, a controversy has arisen whether Government is not bound by the recommendations of the 15th Session of the Indian Labour Conference, whether the Pay Commission was entitled to reduce and alter the food requirements and pattern drastically, and whether the need-based minimum is binding only on employers in the private sector. Government spokesmen have countered these arguments by saying that the 15th Indian Labour Conference did not specifically lay down which one of the three diets evolved by Dr. Aykroyd, viz., the optimum diet, the balanced or adequate diet, or the improved diet, was to be taken into account for calculating the expenditure on food and that the Pay Commission's calculations were not far off the mark if the cheapest of the three Aykroyd diets, viz., the improved diet, was accepted as the one applicable. This explananation is not wholly convincing as the paper placed before the 15th Session of the Indian Labour Conference, on the basis of which a recommendation was made, had clearly stated that "For the purpose of minimum wage determination, the worker and his family might be provided with food to correspond to the adequate diet which has been recommended by Dr. Aykroyd. This is composed of cereals 14 ozs., pulses 3 ozs., vegetables 10 ozs., milk 10 ozs., sugar 2 ozs., oil and ghee 2 ozs., fruits 2 ozs., fish and meat 3 ozs., and egg 1 oz." In fact, the Pay Commission themselves had understood the recommendation in this manner when they observed that the minimum remuneration worked out according to "the recommended formula" might be of the order of Rs. 125. The Labour Minister, however, made it clear that in view of the doubts cast on what was the appropriate diet, the nutritional requirements for the purpose of minimum wage fixation should be referred to a committee of nutritional experts for advice.

The Third Five Year Plan: The Third Plan had nothing new to say in regard to wages. It referred to the operation of the Minimum Wages Act in relation to certain sections of workers in industry and agriculture and said that "these measures have not proved effective in many cases." The only suggestion that it made for making them effective was that inspection had to be strengthened. It did not consider whether the minimum wage levels fixed had been unduly high or low, whether it was at all possible to enforce the minimum wage standards in remote interior areas and why an Act which had been functioning for over a dozen years had not proved effective, not in some but in "many" cases. As regards wage determination in major industries, it merely referred to collective bargaining, conciliation, arbitration, adjudication and the wage board procedure as the various processes available for wage fixation. A reference was made to the Fair Wages Committee's report and the need-based minimum wage evolved by the Indian Labour Conference. There was no attempt to examine objectively whether real wages had gone up or down during the previous plan period, why real wages had

behaved in that manner, what the state of productivity was, whether wage systems could be re-oriented to encourage both management and labour to raise the admittedly low levels of productivity, and how the mechanism of wages could contribute to the better success of the plan.

Certain Points Emerging from Awards: Comparison with the prevailing rates of wages has been accepted as an important and necessary process in wage fixation. Such comparison would be fair and useful only if the wage rates allowed by good employers after proper collective bargaining were taken into account. Otherwise, it would be a case of one unfair rate illuminating the path of another. In justification of comparison with the prevailing rates of wages, the Labour Appellate Tribunal said in a case relating to the Buckingham and Carnatic Mills that unless the same wage level of workers employed in similar occupations in the same locality or in the neighbourhood was maintained, there would be flow of labour from one industry to another in the same locality resulting in unfair competition with all its undesirable consequences.

Similarly, in a dispute between the Cuttack Electric Supply Company, Ltd., and their workmen, it was held that the rates paid by the Company compared favourably with the rates paid by other electric concerns in the State and that there was no case for an increase in wages. In fixing wages, most tribunals have taken into account the rates prevailing in the same or similar industries. The Second Central Pay Commission which reported in August 1959 accepted the principle of fair comparison with rates of remuneration for broadly comparable work in outside employments, though it came to the conclusion that, for want of reliable data, there were practical difficulties in implementing that principle in the case of public servants.

The capacity of industry to pay, which is perhaps the most important criterion in the fixation of wages, is also the most difficult one to measure in precise terms. Generally speaking, all that tribunals have attempted to do is to satisfy themselves that the rates of wages recommended by them are such as can be justified by the financial resources of the industry or unit concerned. Wage rates themselves are not fixed on the basis of any specific measure of capacity, though care is taken to see that the rates evolved are well within the financial resources of the industry or unit concerned.

The Labour Appellate Tribunal laid down in the case of the Buckingham and Carnatic Mills that minimum wages were payable irrespective of the capacity of the industry to pay and that it was only for paying higher rates of wages that capacity had to be consulted. The minimum wage contemplated by the Labour Appellate Tribunal would have sufficed also for a measure of education, medical requirements and other necessities. The Supreme Court, in its judgment in the *Working Journalists' case* delivered on 19 March 1958, however, slightly modified this view and held that "in the fixation of rates of wages which include within its compass the fixation

of scales of wages also, the capacity of the industry to pay is one of the essential circumstances to be taken into consideration except in cases of bare subsistence or minimum wage where the employer is bound to pay the same irrespective of such capacity." The Court distinguished between a bare subsistence or minimum wage and the statutory minimum wage and said that the former was a wage which would be sufficient to cover the bare physical needs of the worker and his family, that is, a rate which had to be paid to the worker irrespective of the capacity of the industry to pay. The Court added that "if an industry is unable to pay its workmen at least a bare minimum wage, it has no right to exist." It will be remembered that the Fair Wages Committee had included in the minimum wage provision for the preservation of the efficiency of the worker in the form of a measure of education, medical requirements and amenities. It was such a minimum wage which the Committee said should be paid irrespective of capacity. The Supreme Court has departed from this recommendation and protected only the bare subsistence wage regardless of capacity.

The Supreme Court has indicated[2] certain considerations which, it has said, might be taken into account in examining the question of capacity. It said that "the proper measure for gauging the capacity of the industry to pay should take into account the elasticity of demand for the product, the possibility of tightening up the organization so that the industry could pay higher wages without difficulty and the possibility of increase in the efficiency of the lowest paid workers resulting in increase in production—no doubt against the ultimate background that the burden of the increased rate should not be such as to drive the employer out of business." These are, of course, not precise yardsticks for measurement but mere avenues of enquiry which would disclose whether or not there is further capacity to pay.

Review of Matters Connected with Wages: We shall discuss in this section primarily three matters, namely, the movement of real earnings of industrial labour since 1939, the possibility of ensuring a need-based minimum wage regardless of the capacity to pay, and State policy in relation to labour's expectations of a growing level of real income. All wage policies have as their aim the securing to labour of its legitimate share in the national product and the ensuring of a steadily growing level of real income. That was why the Second Plan said that "a wage policy which aims at a structure with rising real wages requires to be evolved." It is, therefore, worthwhile enquiring whether the policies adopted since Independence have led to any appreciable increase in real wages. The table on p. 401 gives the index of real earnings (1939 = 100) of factory workers in India between 1939 and 1959.

It will be seen from these figures that the index of real earnings reached the rock bottom of 67 in 1943 (1939=100) and then steadily and gradually

[2] Express Newspapers Ltd. *vs*. Union of India, 1961, I L.L.J. 339.

Year	Index of Gross Earnings	All India Consumer Price Index	Index of Real Earnings
		(Base for all 1939=100)	
1939	100	100	100
1940	105	97	108
1941	111	107	104
1942	129	145	89
1943	180	268	67
1944	202	269	75
1945	202	269	75
1946	209	285	73
1947	253	323	78
1948	304	360	84
1949	340	371	92
1950	334	371	90
1951	357	387	92
1952	386	379	102
1953	385	385	100
		(Base for all 1947=100)	
1953	152	122	125
1954	152	116	131
1955	159	110	145
1956	163	121	135
1957	170	128	134
1958	167	133	126
1959	173	139	124

rose to 102 in 1952. In 1955, the index of real earnings reached 113 (1939 base), corresponding to 145 on 1947 base, the highest so far since 1939. This was brought about by the fact that while gross earnings rose by 7.6 points (1947 base) over the index for 1954 the All India Consumer Price Index fell by 5.8 points. It was the decline in prices, particularly of foodgrains, that was responsible for much of the increase in real earnings. The index of real earnings has since dropped from the all-time record of 144.9 in 1955 to 123.9 in 1959. This is a little below the level of 1939 real earnings. That the real earnings have not gone up after 20 years in spite of more than a four-fold increase in gross earnings is a measure of the inflation that is afflicting the economy.

The recommendations of the Fair Wages Committee marked a distinct advance over the pre-war position in the matter of the evolution of principles that should govern wage fixations. Though these principles have not been implemented in full in large sectors of the economy, there is no doubt that they have greatly influenced wage fixations by tribunals, wage boards and commissions. The very fact that the principles are repeated and accepted in almost every wage adjudication and that wage fixation authorities claim that

they have paid heed to them is proof that the principles are playing their part, though not fully, in influencing the level of wages. Nevertheless, it is of no use shutting one's eyes to the realities of the situation. When the Second Pay Commission fixed the minimum wages of Central Government employees at Rs. 80, employees' unions challenged the calculations and said that even the inadequate and austere diet prescribed by the Pay Commission could not possibly be bought in the market within the allowance set aside for the purpose. And yet State Governments have, on the recommendations of advisory committees, fixed minimum rates of wages in various employments at figures as low as Re. 1.00 and Rs. 1.50 per day. Even such committees have paid lip service to the principles evolved by the Fair Wages Committee and claimed that their recommendations are in accordance with those principles. There is, of course, no use finding fault with these committees. Substantially higher rates than those recommended by them might, in all probability, have upset the economy of the industry concerned and created chaos and confusion leading to closures and unemployment. It is, therefore, obvious that the economy of the country is not strong enough to pay even a low need-based minimum wage, however low the standard of the diet might be brought down. In fixing the daily diet at 15 ozs. of cereals, 3 ozs. of pulses, 6 ozs. of vegetables, 1½ ozs. of sugar, 1¼ ozs. of vegetable oil and ghee and 1 oz. of groundnut, the Second Pay Commission has gone down to what may be called the bare subsistence level in the matter of food. And yet even this diet, according to the Commission's own calculations, cost Rs. 52 per month at prices then prevalent for a standard family of three units. Then there are other items of expenditure on clothing, housing, etc., that go to make up the wage rate. The Pay Commission has observed that Rs. 52.50 is, with some exceptions, "the upper limit of minimum wages fixed under the law." Many of the minimum wages fixed under the Minimum Wages Act are much lower. It is obvious, therefore, that the observation of the Fair Wages Committee, repeated in turn by high-powered tribunals and courts, that an industry which is incapable of paying the minimum wage has no right to exist does not make any sense in the present economic condition of the country. This unfortunate position is, however, understandable. When millions of agricultural workers are grossly under-employed and are correspondingly underpaid, it does not stand to reason that persons employed in activities that are only slightly industrial in character can hope to get a full minimum wage. The principles evolved by the Fair Wages Committee may be suitable for well-organized industries in centres particularly favourable for such industries, but their applicability to other sectors of employment will, at best, be partial. Even in the case of so well-established an industry as the textile industry, the Tri-partite Wage Board which reported in November 1959 said that "it has become evident that the introduction of such need-based wage would be a leap forward of a character that the industry would not be able to support." The Board, therefore, refrained even from referring to the figures for the need-

based minimum calculated for the various centres as no useful purpose would be served by referring to figures "at present unattainable by labour in the industry."

Apart from the principles enunciated by the Fair Wages Committee and a few broad generalizations contained in the Five Year Plans, there is little that can be said to constitute a wage policy for the country as a whole. There have been frequent demands that such a policy should be evolved and that labour should be enabled to share in the increase in the national wealth brought about by the Five Year Plans. There have been even more insistent demands that there should at least be no deterioration in the existing position and that the real income should not be allowed to suffer through rising prices without a corresponding increase in gross wages. To these, there have been no adequate answers except that every effort will be made to hold the price line and that workers will get their share in the increased national wealth. If the Government fails to arrest the upward trend of prices, all talk of a national wage policy will have lost its meaning. The price trends of recent years do not create any confidence that price levels will be maintained. The Bombay cost of living index was 449 in August 1963, but it shot up to 529 in August 1964, inclusive of the 29 points added by the Lakdawala Committee. By February 1965 it had already gone up to 543. The index for July 1966, applicable to the wages payable for August 1966, is 644. At the moment of writing, the index is 653 and is still on the upward march. If industries are hard put to neutralizing the rising cost of living, they are unlikely to be able to find the resources for raising the real wages of workers. It is usual to argue that the entire increase in productivity cannot be treated as being available for current consumption. This may be true, but then labour is entitled to be told what portion is available for current consumption and what is the best way of securing higher earnings without jeopardizing the national economy. It is here that we should concentrate on incentive systems of wages related to productivity. A national drive for implementing such systems on the widest possible scale is necessary with due regard to the health of the worker and the interests of the employer. There is no evidence that, beyond a bare mention here and there, State policy treats this as a matter of major importance. It is not enough if employers are persuaded and encouraged to institute incentive systems of payment; a healthy outlook and approach to such systems should be inculcated in both employers and workers so that necessary adjustments may not be obstructed through lack of foresight. Incentive systems appear attractive to the employer in the early stages of the introduction of a scheme, but they tend to become a millstone round his neck when, after spending a lot of money on improved machines and methods, he finds himself effectively prevented by the union from revising the standards. Worker opposition to the changing of standards has been stiff, and since few unions have the assistance of qualified technical personnel to undertake a revision jointly with the management, the opposition is often ill-informed. A blind slogan-

raising opposition to the adjustment of standards is the surest way of killing incentive systems of payment, and many employers who have tried such schemes would only be too glad to revert to time payment if only they were not prevented by legal complications from doing so. There are rulings to the effect that while an employer cannot be compelled to introduce an incentive scheme, the details of a scheme, once introduced, become justiciable and open to adjudication by industrial tribunals.

When prices rise as a result of shortage of food or when inflation gains momentum as a result of deficit financing, credit creation, the operation of black money, etc., it is obvious that no wage policy can be enunciated except in close collaboration and coordination between the four Ministries representing Finance, Commerce and Industry, Food and Labour. Wages, prices, profits, production and planning are so interlinked that a joint policy is necessary for guiding any of these factors along desired lines. It is to be feared that such concerted planning has not resulted from governmental activities so far.

Wages in Relation to Productivity: Labour is fully aware that it cannot win the battle of wages without engaging in combat the tyrant of productivity. Hence an argument frequently used by labour to prove that it has had a raw deal all these days is that since Independence increases in the real wages of labour have not kept pace with the increased productivity of labour.

A study made by the Employers' Federation of India of 23 major industries for the period 1948-59 shows that while the index of productivity moved up by 41 per cent, the rise in money earnings was of the order of 55.3 per cent (base 1953=100 for both). The rise in the real earnings of 27 per cent of the total labour force involved in the survey outstripped the corresponding increase in productivity while the increase in the real earnings of another 52 per cent of labour closely followed the increase in productivity. The study concludes that it was only in the case of 21 per cent of labour that the increase in real earnings lagged behind the increase in productivity.

This broad picture of wages and productivity might ordinarily have called for no special comments, but the confusion regarding the relationship between these two factors is so great that there is often much loose talk of wages not having kept pace with productivity. It is, therefore, necessary to bestow some attention on that relationship.

We should at the very outset make a clear distinction between productivity and output per man-hour. Productivity measures the relationship between all the inputs of the various factors of production — labour, land, capital and entrepreneurship — and the resulting output. Because of its all-inclusive character this is often referred to as total factor productivity. The inputs would include all factors which contribute to productivity. Better tools, more power, prompt supply of materials so as to cut out waiting time, improved working facilities, larger scale of production, more capital investment, more

efficient work by labour, other factors remaining the same, etc., are all input factors materially assisting productivity. Output must be related to all such measurable inputs. It is only then that one can say whether there has been a net saving in real costs per unit of output and whether consequently there has been a gain in productivity. But without further analysis it would not be possible to ascribe any part of it to higher labour efficiency.

It is more convenient, and hence more common, to measure output in terms of man-hour input without implying that any increase in output per man-hour is ascribable wholly or even in part to labour. Man-hour input is easily measured and hence output per man-hour can be precisely stated. But output per man-hour does not in any way measure labour's efficiency or its contribution to production. The output per man-hour is influenced by many factors other than labour. When the output per man-hour increases, it cannot by any means be inferred that labour is working harder or is contributing more irrespective of other factors so as to entitle it to higher wages. On the other hand it is now well-established that much of the increase in the output per man-hour achieved over the years in advanced countries has been due to greater mechanization and automation. Capital investment per worker has steadily gone up with advancing technology. The U.S. Census of Manufactures shows that between 1849 and 1929 the capital investment per worker rose from 557 dollars to 6,152 dollars. This figure must have risen much higher since the Second World War. The Employers' Federation of India has estimated that the investment per worker (at constant prices with 1953=100) rose by 306 per cent between 1948 and 1959, that is from Rs. 717 per worker to Rs. 2,911. Productivity gains have been particularly significant in industries in which capital has been substituted for labour at a high rate. The Commissioner of Labour Statistics of the United States said at a meeting of the Society for the Advancement of Management in New York in 1946: "The fact that output per man-hour more than doubled in the period between World War I and II certainly does not mean that the average employee was working twice as hard, or intrinsically had twice as much ability."

The difficulties of measurement of output per man-hour are considerable. Measurement is affected by a host of factors including shifts in the composition of output from low value output to high value output, the contribution of labour by unpaid family members, capital consumption tending to exaggerate the existing stock of goods, etc. It has, therefore, been recognized that output per man-hour calculations are but approximations revealing only the trends and not the precise measures of productivity, unless in making these calculations the other factors can be isolated or do not move during the period for which such (comparative) calculations are made.

It is now fully recognized even by the more aggressive ranks of labour that increased wages are generally possible only with increased productivity. The American Federation of Labour said in 1946: "Living standards do not rise by any magic formula. They can rise only when workers produce more per

hour and per year of work." This sensible caution is all but lost in conditions obtaining in India. Even when the truth of the A.F.L. statement is fully realized, the question arises as to how much workers can expect out of rising productivity, not to speak of claims to a rise in wages when there is no increase in total productivity. All increases in total productivity cannot, it need hardly be said, be used for raising dividends or wages.

Regarding the manner of sharing the gains of productivity, there are two schools of thought. One would advocate a reduction in selling prices so that the consumers at large, including workers, can benefit by such reduction. All-round prosperity will ensure expansion of employment to the great advantage of labour. The other school would be inclined to give more importance to dividend or wage increases than to price reductions.

If rising productivity is to be shared in part by labour, all manner of questions bearing on the relationship of the one to the other arise. Should increased productivity be compared with money wages or with real wages? Should the productivity to be compared be of the particular industry or of the unit concerned or of the national economy as a whole? Should wages or labour costs be the criterion for comparison?

The wage factor to be used should be labour costs and not merely daily or hourly wages or earnings. Fringe benefits have increased considerably in all countries, including India, in recent times and such benefits have led to the enhancement of unit labour costs. A comprehensive study made in 1960 by the Employers' Federation of India shows that for industry as a whole fringe benefits constituted 21.30 per cent of the total wage bill. The percentages were 24.84 for mining, 24.43 for plantations, and 19.99 for manufacturing industry. In terms of money value employees in the manufacturing sector received fringe benefits of the value of Rs. 404 per year as against Rs. 365 in mining and Rs. 196 in plantations. In the manufacturing sector there were considerable variations as between one establishment and another. The fringe benefits amounted to Rs. 1,340 in petroleum refining and selling and Rs. 1,003 in cigarette manufacturing and selling at one end of the list and to Rs. 185 in coir factories and Rs. 160 in jute textiles at the other.

The percentages of fringe benefits to wage earnings, as mentioned above, may be compared with 12 per cent in the United Kingdom, 17 per cent in the United States and 43 per cent in Italy. The comparisons are not exact inasmuch as the definition and coverage of fringe benefits vary from country to country.

When fringe benefits constitute so large a proportion of wage earnings, it is obvious that it is only total labour costs that should be compared with productivity.

While talking of productivity changes in the economy as a whole, one has to consider the effects of shifts in the economy on the national productivity figures. For instance, when the relative proportions of workers employed in agriculture and in industry or in low product value industries and in high

product value industries change, the national productivity figures may go up even though there may be no change in the productivities of the contributing sectors themselves. The results of the shift will have to be allowed for in using the national productivity figures for comparison.

A great difficulty is that even though figures of output per man-hour are calculated, there are no reliable means of ascertaining labour's contribution to the increased physical output in any industry. For this reason, the only broad comparison considered valid is between the real wages of labour and the man-hour output for the economy as a whole and not for particular industries or companies. Both indices must apply to all labour employed in the economy. Even in this comparison between the progress of real wages of labour and that of the output per man-hour for the economy as a whole, long-term trends over many years, say 25 or 50, alone are considered valid. Short-term trends and year to year comparisons have no validity whatsoever.

Comparison between the real wages of labour and the output per man-hour within an industry or company is of little use. The position of a particular industry in the national economy may change from time to time. The prices of its products or services may go up or down for reasons peculiar to the industry or company. Declining industries may have to lower their prices to ward off complete closure. Other industries may mark up or down their prices for attaining special objectives. The value of the output per man-hour is thus significantly affected by such extraneous, but nevertheless vital, considerations. Similarly an individual company's fortunes may fluctuate from year to year for reasons wholly unconnected with labour's contribution to production. The value of a unit of physical output may change considerably from year to year and should not be compared with changes in real wages. One way of getting over this is to use the sales value of the output and not the physical volume, but even this will not take into account various factors, other than labour effort, contributing to the total output.

When unions clamour for increased wages on the ground of increased output per man-hour in a particular company or industry, they would do well to heed the two basic objections to such a course pointed out by the late Professor Sumner Slichter. The first is that as the rate of technological progress varies greatly from industry to industry, if wages were increased in proportion to the rise in productivity, the wage structure would soon have little relationship to the skill and responsibility required of workers. Unskilled workers in technologically advancing industries would be receiving far more than skilled workers in other industries. The second objection is that if wages were put up in direct proportion to output per man-hour, this would prevent the industry from reducing prices and thus from expanding output and employment.

Similarly Professor Clark Kerr said in the Pacific Gas and Electric Company arbitration of 1947: "Real wages can rise significantly in the long run only as physical productivity increases. To tie wages rigidly in each minor

segment of the economy to changes in physical productivity in that segment, would, however, cause greater distortion as between and among progressive, static and regressive industries than could be sustained."

Attempts to relate wages in particular industries to the output per man-hour in those industries must thus lead to great distortion of the wage structure. Moreover the effects of such unjustified enhancement of wages must necessarily be to pass on the pressure on wages to other less progressive sectors of the economy. This will lead to rise in prices where existing levels of profits are insufficient to absorb the enhanced wage burden and create wage inflation.

So long as incentive systems of payment relate increased returns directly to increased productivity, unit labour costs will not rise and there will be no risk of inflationary tendencies attributable to rising wages. This is, of course, quite different from paying higher wages to workers in a company or industry merely on the ground of an overall increase in the output per man-hour in the company or industry unrelated specifically to the efforts of the workers concerned.

When there is no monetary inflation in the economy, a wage inflation may lead to one of two consequences. Either it may cut into profit margins and act as a disincentive to further expansion of business and employment or it may, in periods of expansion, permit a rise in prices. If price increases become widespread, the economy may be afflicted by growing inflation.

Under present-day Indian conditions the prevalent inflation may largely and basically be due to monetary and fiscal inflation. Large budgetary deficits consequent on large-scale planning and development lead to credit creation. This may be a major cause of a rise in prices. But if in addition wage inflation occurs in circumstances not fully supported by specific productivity increases, with consequent rise in unit labour costs, the combined effects of wage and monetary inflations are sure to push up prices from one high level to another.

Labour often enquires whether wage increases are the cause of, or merely the pretext for, price increases. Basically higher prices are accepted because of the unsatisfied demands, and so long as demand persists, prices could be raised even if there were no wage increases. But frequent increases of prices have a public relations aspect which cannot be ignored. It would do no good to business to have the impression broadcast that the public can be exploited at will. In such a situation a wage increase merely provides the employer with a sufficiently valid pretext for increasing prices without incurring public wrath.

On the other hand in some industries which are labour-intensive the share of labour costs in total costs may be so high that any large increases in labour costs may cast a heavy burden on the industry which cannot be sustained without a direct increase in prices. Thus wage increases may be the reason for price increases in some cases; they may be the pretext in others. In the

former case, wage inflation may be responsible for an impressive rise in the consumer price index. If in an economy under rapid development the Government itself abets rapid wage increases through frequent statutory refixations, direct linking of wages to consumer price indices, diversion of substantial proportions of profits for allocation to labour as bonus, etc., the result may well be that wage increases are as much a contributory cause to inflation as monetary policies. It is this aspect that has been emphasized by Professor Weintraub when he says, in relation to the Indian economy, that "the rise in unit labour costs . . . can be alleged, with little fear of contradiction, as responsible for inflation." Here it would be pertinent to quote the late Professor Sumner Slichter from an article he wrote in the *Christian Science Monitor* in October 1957: "It is ridiculous for a government that is sincerely interested in preventing inflation to give employers powerful encouragement to grant wage increases. But the income-tax of 52 per cent on corporate profits means that 52 per cent of any wage increase granted by a profit-making company is paid by the government." It may truly be said that our Government is financing inflation at its own cost and consequences.

To summarize, it may be mentioned that any increase in the earnings of labour which is based on a properly-evolved incentive system of wages and which does not lead to an increase in unit labour costs will not lead to inflation and can be safely supported in the interests of a developing economy. Beyond this the only other permissible method of linking wages with productivity is to ensure that the real wages of labour do not increase in the aggregate by more than the average rate of increase of productivity of the economy as a whole arrived at on the basis of the actual figures for a sufficiently long period. Such an increase, even if widespread, can be sustained by the steady growth of the economy. These two measures ensure a steady but cautious advance on the wages front; if progress is limited to this, there is no need to frighten labour in normal times with talk of a wage-freeze. The wage-freeze is a desperate remedy resorted to by administrations which wake up only when an emergency overtakes them. The freezing of wages, dividends, earnings, and prices may become necessary in a real emergency, such as the country is now experiencing, but this may not be necessary when the economy has attained some measure of stability. We have elsewhere referred to what the British Government is currently doing in regard to these very unpalatable measures. In a developing economy with rampant, or even runaway, inflation, every wage increase must be fully justified. The penalty for failure to exercise sustained vigilance in this respect is the development of a situation involving large-scale inflation when many desperate remedies including a wage-freeze may have to be applied.

Dearness Allowance and Inflation: The practice of paying dearness allowance in addition to basic pay to compensate workers for the rising cost of living came into vogue in India during the First World War, but it seems gradually

to have disappeared during the inter-war years, particularly during the economic recession. With the rapid rise in prices during the Second World War, industrial workers were not slow to make demands for the grant of dearness allowance. The demand made by the cotton textile workers of Bombay was referred by the Government to a Board of Conciliation in 1939. The Board directed the millowners to pay dearness allowance on a scale linked to the Bombay cost of living index. A similar award was given by the Bombay Industrial Court in respect of the cotton textile workers of Ahmedabad. Demands were soon raised in other places too and were conceded in various forms and to various degrees by industrial tribunals.

In the absence of any legislation on the subject, the grant of dearness allowance has, all these years, been regulated by the awards of industrial tribunals. Dearness allowance awards are broadly of two types, namely (*i*) those which grant dearness allowance at fixed amounts which are not changed with changes in the cost of living and (*ii*) those which link dearness allowance with the cost of living index.

Ideas about dearness allowance seem to have developed in stages from a comparatively conservative and cautious policy to one of socialistic liberalism. The adoption by the State of the policy, or at any rate the slogan, of the Socialistic pattern of society has had much to do with giving new dimensions to the concept of dearness allowance.

One of the earliest public enquiries into the question of dearness allowance was by the Rau Court of Enquiry constituted in 1929 to go into the question of dearness allowance for Railway employees. The Court said: "We have carefully considered whether there should be a single flat rate of compensation for all employees or whether there should be different rates at different levels of income. As already indicated, simplicity and uniformity would dictate a single flat rate for all." In the early days of Independence this policy seems to have found favour with many, but not all, industrial tribunals. As late as 1953 the Appellate Tribunal upheld this view in the appeal in the *Artisan Press Ltd. case* and observed that "the tribunal has taken a correct view in maintaining the flat rate of dearness allowance."

A flat rate meant in effect a fixed amount of dearness allowance for all categories of workers. Some adjudicators must have felt that this was not adequate to do justice to workers and staff at the higher levels of remuneration and preferred to adopt a graduated scale of dearness allowance based on income slabs. This practice got encouragement and impetus from its adoption by the First Central Pay Commission. Under this system though the amount of dearness allowance increases with the income slab, the percentage of allowance to the income goes on diminishing. Thus the extent of neutralization of the higher cost of living steadily diminished with increasing salary levels though the position was much better than under the fixed amount system. Under the graduated system the amounts of dearness allowance sometimes increased with increasing cost of living index. That was the

pattern laid down by the First Pay Commission though provision was made only for a limited range of variation in the cost of living index. When the index crossed that limit, the Central Government made a public announcement that increase in the dearness allowance to the full extent of the increase in the cost of living index had to be ruled out as that would result in serious deficits in the Government's budgets and intensify the forces of inflation. No doubt certain increases were subsequently given. The Second Pay Commission too granted fixed amounts of dearness allowance and observed that "if during a period of 12 months the index remains on an average 10 points above 115, the Government should review the position and consider whether an increase in the dearness allowance should be allowed and if so at what rate." Thus as far as Government employees were concerned, the policy in regard to dearness allowance was certainly a cautious, and even halting, one.

A further step in the liberalization of the quantum of dearness allowance payable was that adopted by certain tribunals of linking dearness allowance with the cost of living index in one way or another. This is the pattern of payment adopted by the textile mills of Bombay and Ahmedabad for many years past. Under this system the amount of dearness allowance is the same for all categories of workers, but it is directly linked to the cost of living index number. The rate of allowance is fixed for every point rise in the index number above a certain level. For instance, in the textile mills of Bombay the rate is 1.9 pies per point of rise above 105 in the Bombay cost of living index. Occasionally a higher rate is allowed when the cost of living index goes above a certain limit. The Bombay rate, for instance, is to be increased by 10 per cent when the cost of living index goes above 350.

In this pattern of adjustment of dearness allowance based on the cost of living index, the extent of neutralization of the increased cost of living might be 100 per cent or a smaller percentage. The Ahmedabad textile industry provides for a 100 per cent neutralization, while the textile industries in Bombay and Sholapur allow only 90 per cent and 67 per cent neutralization.

The Fair Wages Committee of 1949 observed that for the lowest category of wage earners the target should be compensation to the extent of 100 per cent of the increase in the cost of living and that for categories above the lowest, a lower rate of compensation was justifiable.

Though 100 per cent neutralization was granted by certain tribunals soon after the close of the last war, the inadvisability of granting full neutralization in an economy of rising prices was increasingly realized and this deterred tribunals from following the 100 per cent formula. The Labour Appellate Tribunal which started putting a brake on the originality of thinking of industrial tribunals observed in the *Buckingham and Carnatic Mills case* in 1951: "...The generally accepted view is that complete neutralization should not be allowed by payment of dearness allowance. Two reasons have been given in support of that view, namely, (*i*) the industrial workers should also be called

upon to make sacrifice like all other citizens affected by the rise in prices due to abnormal conditions; and (*ii*) complete neutralization would tend to add fillip to the inflationary spiral. Great weight was placed on the last-mentioned reason in the report of the United Provinces Labour Enquiry Committee, 1946-48, where it was pointed out that complete neutralization would lead to a vicious circle, namely, a rise in the total emoluments of an industrial worker which would force a rise in prices which in turn would again force a rise in total emoluments of an industrial worker. We consider these principles to be sound and cannot countenance a claim to such dearness allowance as would neutralize either cent per cent or nearly cent per cent of the rise in the cost of living due to abnormal rise in the price of the commodities." The Supreme Court observed in the *Calcutta Tramways case* that "we can now take it as settled that in matters of grant of dearness allowance except to the very lowest class of manual workers whose income is just sufficient to keep body and soul together, it is impolitic and unwise to neutralize the entire rise in the cost of living by dearness allowance. More so in the case of middle classes."

The system of directly linking dearness allowance with the cost of living index, which seems so attractive to labour, has gathered momentum in recent times and has even received the stamp of official approval through recommendations at official tri-partite conferences. The Central Government, several State Governments, and wage boards have started advocating the adoption of the system of linking dearness allowance to the cost of living index.

The magnitude of these payments may be gathered from the fact that in a typical engineering establishment in Bombay, the workers received a dearness allowance of Rs. 3.39 per day in December 1962 while they received Rs. 4.91 per day in August 1965, that is, an increase of about 45 per cent in less than three years. By September 1966, the rate of dearness allowance had further gone up to Rs. 5.97 per day.

The so-called cost of living escalator clauses have received much attention at the hands of economists. Labour has, of course, justification for demanding such increases, but the contribution of escalator clauses to the creation of a wage-price inflationary spiral is a matter that should engage the close attention of State planning authorities. When wages are increased as a result of increases in prices, there is no pretence that they are being increased on the basis of increased output per man-hour. On the other hand such increases become inevitable particularly during war time when productivity is an early casualty or during periods of rising prices caused by large-scale deficit financing to support ambitious planning in peace times. In either case there is no connection between the increased wage payments and productivity. The result is that there is always a rise in unit labour costs. So long as such automatic adjustment is restricted to very small groups of labour, its contribution to rising prices may be small, but as soon as such adjustment extends to large areas of the economy, it becomes directly responsible for large-scale inflation.

This was vividly emphasized by John Maynard Keynes:[3] "A demand on the part of Trade Unions for an increase in money rates of wages to compensate for every increase in the cost of living is futile, and greatly to the disadvantage of the working class. Like the dog in the fable, they lose the substance in gaping at the shadow. It is true that the better organized sections might benefit at the expense of other consumers. But except as an effort at group selfishness, as a means of hustling someone else out of the queue, it is a mug's game to play."

The consequences of an automatic adjustment of wages to the rising cost of living have been commented on by the Second Pay Commission. It said:[4] "... if in such a situation the rise in prices were to be compensated by raising or supplementing salaries and wages, one section of the community—which may or may not be the most vulnerable—would be singled out for protection at the cost of others.... The economic consequences of compensation, if given, may also vary according to the state of the economy at the particular point of time. If the inflationary pressure is already severe, a further addition to incomes may aggravate the situation. Moreover the claim of employees for compensation is only one of the claims on the financial resources of the Government, and we do not wish to make a recommendation which would, by implication, accord priority to that claim over all other competing claims, including those of investment essential for the country's advancement, and of expansion of social benefits which the employees of Government would share with the rest of the community."

There is no reason why this sound approach should not apply equally to the private sector too. Inflation in the economy causes hardship to the entire population and if one section of the public wants to protect itself against that hardship, it can do so only by inflicting correspondingly greater hardship on the rest of the community. During a period of uncontrolled inflation, the linking of wages to the cost of living and neutralization of the entire increase in the cost of living are dangerous and self-defeating practices. It is the duty of every section of the community to take its due share of the hardship. During such a period much of the increase in wages would have to be won directly through higher productivity. A period of growing inflation is certainly not the time for Ministers and other governmental spokesmen to start advocating social justice in the form of a large-scale expansion of the policy of linking dearness allowance to the cost of living index.

Wage Boards: For about ten years after the enactment of the Industrial Disputes Act, 1947, the settlement of wages, when mutual agreement was not forthcoming, was through adjudication by industrial tribunals. The large majority of the latter were single-member tribunals presided over by persons

[3] J. M. Keynes: *How to pay for the War*, 1940, pp. 6-7.

[4] *Report of the Second Pay Commission*, p. 95.

with judicial experience. While such adjudication was, on the whole, satisfactory so long as adjudication was confined to a single establishment, it failed to give satisfaction when adjudication had to be made industry-wide, especially on a national scale. Many anomalies crept in, the responsibility for which was fastened on the tribunal. Even in the case of adjudications unit-wise, dissatisfaction arose over different standards adopted for different establishments. Coordination became a problem especially after the abolition of the Labour Appellate Tribunal. Moreover most adjudications gave rise to prolonged litigation in High Courts and in the Supreme Court, and the search for a speedier and more satisfactory method of settlement began.

It was in this context that attention was turned to the advantages of wage boards over industrial tribunals in the matter of settlement of wages, especially when a whole industry was involved. Since a wage board would be a tripartite one, the representatives of the parties themselves would largely be responsible for evolving the final recommendations. If there was disagreement between the parties, the Chairman would act as the arbitrator or umpire. The wage board thus combined the advantages of collective bargaining with those of voluntary arbitration. Since the board's recommendations would have to be voluntarily accepted and implemented, there would be no question of any appeal to the High Courts or the Supreme Court.

The recommendations of the first Cotton Textile Wage Board brought out the two main drawbacks of the system. First, as the recommendations had no statutory force, some establishments chose to ignore them. Secondly, the conclusions of the Wage Board were essentially compromises, and, as with all compromises, showed no evidence of any cogent policy or fixed principles. For instance, in the case of the textile industry, the wage systems at various textile centres contained numerous surprises. And yet when the Board formulated its proposals, it awarded a flat rate of increase to employees in a particular class of establishments. Thus the differences in emoluments as between one unit and another were not levelled up, and no attempt was made to evolve a uniform set of wages for establishments of the same class in the same area. This would not have mattered so long as the decisions were to be accepted voluntarily, but when legislation was subsequently undertaken to enforce the decisions, these infirmities must have assumed large proportions.

In order to deal with the first drawback, the Government of India enacted special legislation to give effect to the Textile Board Award. Compulsion will produce many complications and bring back some of the defects of compulsory adjudication. When there is compulsion, there will have to be provision for appeal, for which there will be constant agitation. Moreover compromises will be difficult to come by as the representatives on the board are unlikely to know how a difficult formula might adversely affect particular units. If there is to be an appeal, the wage board decisions will have to be backed up by cogent arguments and statistics; otherwise the award runs the

risk of being reversed in appeal. Thus the special advantages of a wage board will vanish.

Referring to the Bill introduced in Parliament to get the recommendations of the Cotton Textile Wage Board enacted into law, *The Times of India* said that the Bill "substitutes coercion for what was all along conceived as a voluntary process.... It is conceivable that if the members of the Board had known that their recommendations would be adopted into law, their whole approach might have been different." The large majority of units had already implemented the recommendations and there was every possibility that some of the units which had not implemented the recommendations were perhaps unable for financial reasons to implement them. The editorial added: "The fact that the workers' unions have not felt called upon to agitate against the few non-implementing mills probably indicates their conviction that the units concerned are not in a position to give effect to the recommendations." Moreover a compromise formula which may or may not be consistent with the known facts or with the logical requirements of a case would make a bad law which could not be supported by any sound reasoning.

There are certain practical difficulties in the setting up of a wage board itself. If the employer and worker members are to be representatives of their respective classes, there will have to be a rational way of selecting the representatives. There have been complaints against the representative character of some members. There may not be central organizations of employers and workers which are truly representative of the two classes. So individual units can raise the preliminary objection that the representatives do not represent them.

Another defect in the functioning of wage boards is the inadequate attention paid to the special problems of particular regions. Representatives may be aware of problems only in their particular regions but may be totally unaware of the problems of other regions. Since the eventual recommendations will be the result of compromises, the board may not feel called upon to formulate such special problems and to solve them.

So long as board recommendations are compromises, it would be futile to look for any principles which might lend themselves to general application. The Cement Wage Board made a show of implementing the need-based minimum wage idea with certain reservations. The Cotton Textile Board made no such pretence and gave flat increases on existing wages. The Cement Board provided for two different regional scales while the Sugar Board allowed four such scales. The Cement Board gave both a basic wage and a dearness allowance, but the Sugar Board fixed a national minimum wage and gave regional allowances for the differences in the cost of living.

Wage Boards are experimenting with ideas even as tribunals did in the early years of compulsory adjudication. Wage boards will produce results distinctive from the awards of industrial tribunals only if they are allowed to function on a voluntary basis. They will naturally suffer from the defects

and drawbacks common to voluntary bodies. One essential requirement for the success of wage boards is that the parties concerned with the working of a board must be willing and anxious to secure the services of a board. It may not always be possible to secure such willingness from all employers or from all employers from all regions. In that case a wage board should function only in respect of defined regions or units. To rope in large numbers of unwilling employers under the guise of a voluntary arrangement is to start with a handicap. The wage board can prove to be a potent agency for collective bargaining so long as the bargaining unit is limited to establishments which sincerely prefer this method to any other.

Bonus: Next to wages, bonus is the subject which agitates labour most every year. The extent of the agitational effort expended on this subject is out of all proportion to the number of disputes finally taken to industrial tribunals. That is why this subject is generally referred to by both employers and workers as the "hardy annual."

Bonus payments, as a regular feature, started after the First World War. In the initial stages it was confined to the Bombay textile industry. During the War, a war bonus was given by a number of units in the textile industry, but this was more in the nature of dearness allowance than of bonus as we understand this term now. The practice of payment of bonus immediately brought about disputes and the whole question of payment of bonus was referred to the Bonus Disputes Committee appointed by the Bombay Government in 1924. That Committee held that bonus was an *ex gratia* payment to be settled by collective bargaining between workers and employers. In this view, the employers of the earlier period refused to concede bonus unless there was a binding contract in explicit or implied terms between the parties. Gradually, during and after the Second World War, the outlook on bonus payments began to change, and industrial tribunals started taking the view that bonus was not a mere *ex gratia* payment and that it could be claimed even in the absence of a binding contract.

Typical of this latter view was the one expressed by the arbitrator in the *Lahore Electric Supply Company's case* to the effect that though bonus was not a legal right which could be enforced in a court of law, "there is equally no doubt that the advancement of economic thought and industrial relations had led to a state of affairs where the workers' claim for a share in the profits of industry may be legitimate and may have a certain moral and economic right." It was, however, not until the decision of the Labour Appellate Tribunal in the bonus dispute between the Bombay Millowners' Association and the Rashtriya Mill Mazdoor Sangh given in 1950[5] that the controversies in regard to the nature of the claim for bonus were finally settled. The Labour Appellate Tribunal observed as follows:

[5] 1950 II L.L.J. 1247.

"Bonus is cash payment made to employees in addition to wages. It cannot any longer be regarded as an *ex gratia* payment, for it has been recognized that a claim for bonus, if resisted, gives rise to an industrial dispute, which has to be settled by a duly constituted industrial court or tribunal....Where the industry has capacity to pay and has been so stabilized that its capacity to pay may be counted upon continuously, payment of living wage is desirable; but where the industry has not that capacity or its capacity varies or is expected to vary from year to year, so that the industry cannot afford to pay living wages, bonus must be looked upon as the temporary satisfaction, wholly or in part, of all the needs of the employee."

This view has been upheld by High Courts and the Supreme Court. The Supreme Court[6] has pointed out that bonus is not a deferred wage "because if it were so, it would necessarily rank for precedence before dividends." Bonus cannot also be equated to profit-sharing since it has to bear some relation to wages. In short, bonus is not an *ex gratia* payment or a deferred wage or profit-sharing in its true sense but is a sort of additional income which shortens the gap between the living wage and the actual wage paid to workmen.

The nature of bonus has been clarified by the Supreme Court in one of the later cases[7] as follows:

"Bonus is not, as its etymological meaning would suggest, a mere matter of bounty gratuitously made by the employer to his employees; nor is it a matter of deferred wages. It has been held by this Court in *Muir Mills Company Ltd.* vs. *Suti Mills Mazdoor Union, Kanpur,* that the term 'bonus' is applied to a cash payment in addition to wages. It generally represents the cash incentive conditionally on certain standards of attendance and efficiency being attained. This decision is based on the view that both labour and capital contribute to the earnings of the industrial concern and so it is but fair that labour should derive some benefit if there is surplus available for that purpose. Even so, the claim for bonus cannot be effectively made unless two conditions are satisfied: the wages paid to workmen fall short of what can be properly described as living wages; and the industry must be shown to have made profits which are partly the result of contribution made by the workmen in increasing production."

Though it has been mentioned above that bonus is not profit-sharing in the strict sense of the term, the difference between profit-sharing and bonus is only slight. The International Congress on Profit-Sharing held at Paris in 1889 defined profit-sharing as "an agreement, freely entered into, by which the employees receive a share, fixed in advance, of the profits." The *Encyclopaedia Britannica* says that profit-sharing is "the term applied to an arrangement under which an employer, in accordance with an agreement freely entered

[6] Muir Mills Co. Ltd. *vs.* Suti Mills Mazdoor Union, Kanpur, 1955 I L.L.J. 1.

[7] Sree Meenakshi Mills Ltd. *vs.* Their Workmen, 1958 II L.L.J. 239.

into, hands over to his work people as supplementary remuneration a share, fixed in advance, of the profits of the concern in which they are engaged." Thus profit-sharing has three essential features, viz. (*i*) that the arrangement is voluntary and based on an agreement between an employer and his employees, (*ii*) that the amount to be distributed depends on the profits earned by the enterprise, and (*iii*) that the proportion of the profits to be distributed among the employees is determined in advance. Bonus payments may not fulfil these technical features of profit-sharing. Bonus may not be paid voluntarily; it may be secured through adjudication. There may be no agreement about bonus between an employer and his employees. Though bonus is to be paid out of profits, the share of the profits to be distributed may not be settled in advance. In spite of these differences, bonus, in effect, is not very different from profit-sharing. Though the object of payment of bonus is somewhat different from that of profit-sharing, there is no doubt that both come out of profits and are, in fact, a share of the profits. The size of the payment to the employee would, under both the schemes, depend largely on the amount of the profits, the difference lying in the fact that unlike profit-sharing, the size of the bonus may not increase beyond a limit when the profits are very large.

Committee on Profit-Sharing: It was because of these close similarities between profit-sharing and bonus that the Government of India appointed in May 1948 the Committee on Profit-Sharing to lay down principles for determining labour's share of the surplus profits in industry. The Committee was not unanimous in its recommendations. The majority, however, recommended a scheme for being tried out in six well-established industries. The scheme defined 'surplus profits' as net profits minus 10 per cent of net profits for reserves minus 6 per cent on capital employed. By net profits was meant gross profits minus depreciation, managing agency commission and taxation. The expression 'capital employed' was defined as meaning both paid-up capital and all reserves held for the purpose of the business. 50 per cent of the surplus profits was to be allocated as labour's share and distributed to eligible workers in proportion to each person's total earnings during the preceding twelve months minus dearness allowance and any other bonuses received by him. Profit-sharing, in its strict sense, could be only the sharing of the profits of each unit, and there could, therefore, be no pooling of profits of the units in a locality or payment of a minimum rate of profit-sharing by all units in the locality. There would also be no payment when a unit ran into losses. The Committee, therefore, recommended that any scheme of profit-sharing should normally be unit-wise but recognized that it might be inevitable, in certain selected cases, to pay profit-sharing on an industry-cum-locality basis. The scheme evolved by the majority met with resistance from both sides. The employers were opposed to any scheme of payment on the basis of industry-cum-locality as that would have meant payment of a minimum bonus even

by a unit which had incurred a loss or earned a profit less than the average profit of the industry. The workers' representatives objected to various details of the scheme. Because of the opposition from both sides, the Government found it difficult to evolve an agreed scheme.

Principles Evolved by Tribunals: In the absence of a statutory scheme regulating the payment of bonus, the principles that now apply to such payment were all evolved by industrial tribunals at various times. Payment of bonus arises only when there are surplus profits after meeting prior charges. Even where there are surplus profits, the Supreme Court has held that two conditions must be satisfied before a demand for bonus can be justified, viz., (*i*) that wages fall short of the living standard, and (*ii*) that the industry makes profits, part of which is due to the contribution made by the workmen in increasing production.

The detailed method of calculation of bonus was laid down by the Labour Appellate Tribunal in its full Bench Award of 1950 in connection with the bonus dispute in Bombay cotton textile mills. According to the formula evolved by the Appellate Tribunal, the available surplus is determined after allowing for all prior charges, viz., (*a*) depreciation according to income-tax rates, (*b*) income-tax, (*c*) fair return on capital, (*d*) fair return on reserves utilized as working capital, and (*e*) any additional amount required in excess of the depreciation for the purpose of rehabilitation, replacement and modernization of machinery. These items are to be deducted from gross profits to arrive at the surplus available. The depreciation allowed by the income-tax authorities is a percentage of the written down value and will ordinarily not be sufficient for rehabilitation, replacement and modernization of machinery. For this purpose, an extra amount has to be set apart under the heading of 'reserves'. The amount to be set apart under reserves would vary with the circumstances of each case, such as (*a*) the remaining life of the plant and machinery, (*b*) the estimated replacement costs, and (*c*) the period of years over which replacement would have to be spread. This is one of the most contentious points in a bonus adjudication. The return on paid-up capital is to be calculated at 6 per cent. On reserves utilized as working capital, a return of 4 per cent is permissible. The reserves belong to the company and would, if employed as working capital, obviate the necessity of borrowing from outside sources. As borrowing from outside will necessarily be at a much higher rate of interest, it is to the advantage of workers themselves that reserves should be utilized as working capital and allowed a return of 4 per cent.

It will be seen from the details of the full Bench formula that that formula bears a close resemblance to the scheme of profit-sharing evolved by the Committee on Profit-Sharing. The list of prior charges is practically the same under both. The Committee on Profit-Sharing allowed a return of 6 per cent on reserves used as working capital while the Appellate Tribunal has allowed

4 per cent. The Committee on Profit-Sharing suggested the setting apart of 10 per cent of the net profits as reserves, while the Appellate Tribunal has reserved this for settlement with reference to the circumstances of each case. A third difference is that while the Committee on Profit-Sharing suggested the allocation of 50 per cent of the surplus profits for distribution to workers, the quantum of the bonus payable out of the surplus profits has been left open by the Appellate Tribunal. Barring these differences in detail, there is hardly any difference between the scheme of the Committee on Profit-Sharing and that of the Appellate Tribunal.

The Appellate Tribunal has made it clear that bonus is payable only if there are surplus profits. There is thus no question of payment of bonus by losing concerns. Though a uniform standard of payment is generally evolved for all units which can afford to pay, those that cannot afford to pay are not brought in.

In a few cases, tribunals attempted to award bonus, irrespective of profit or loss, on the ground either of past practice or of preservation of industrial peace, but all such attempts have failed. The Appellate Tribunal has pointed out that the plea of social justice, on which such awards have been based, cannot be a mere fancy of any individual adjudicator and that in evolving the full Bench formula, the Appellate Tribunal itself had considered the question of social justice and equated the rights and liabilities of employers and workmen with a view to achieving a just formula for the computation of bonus. The Appellate Tribunal has observed that "whenever our full Bench formula is applied, there is dispensation of social justice to the appropriate limits." This view has been upheld by the Supreme Court which observed in the *Muir Mills case* that social justice was a very vague and intermediate expression and that "the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on more solid foundations."

To the general rule that bonus is payable only in establishments which have a distributable surplus of profits, there is one exception which has occasionally been upheld, viz., payment of customary or contractual bonus. In a dispute between the Indian Industrial Workers Ltd. and the Engineering Mazdoor Sabha, the point at issue was the payment of Puja bonus. The management resisted the claim on the ground that there was no available surplus of profits. The Labour Appellate Tribunal rejected the management's contention and observed that its full Bench formula applied only to cases of profit bonus and not to a case of customary or contractual bonus. The Appellate Tribunal observed that in the case of customary or contractual bonus, the liability depended exclusively on the express or implied contract under which the claim was made.

One of the conditions of payment of bonus stipulated by the Supreme Court is that the workmen concerned must have had a hand in the earning of the profits, a share of which is being sought. This does not mean that the workmen

or everyone of them should have been engaged in manufacturing or producing goods. The marketing of goods or the rendering of service in the process of production would be sufficient to render an employee eligible for bonus. Clerks employed by an establishment which manufactures or markets goods are equally eligible for bonus, as without their service the production could not have been brought about. All those that are a necessary part of the organization are entitled to share in the profits. At the same time, the profits must have resulted from the efforts of the workmen. In the *Shalimar Rope Works case*, it was held that the company's profits had been increased by a fortuitous circumstance of an exceptional character and that much of the surplus profits had no connection with the productivity of labour. A substantial rise in the price of raw materials was the result of the Korean war and if this led to profits, the workmen certainly did not make any contribution. Similarly in the *Nellimarla Jute Mills case*, the Appellate Tribunal held that the amount earned as interest on the investment was unrelated to the employees' efforts and should be excluded from the surplus profits.

Workers have, from time to time, laid claim to a share in the reserves of their companies. In 1947 an adjudicator in Uttar Pradesh ordered the distribution of 50 per cent of the reserves of an electric undertaking to employees when it was taken over by the State Government. All such attempts have, however, been set at naught by the decision of the Supreme Court in the *Muir Mills case*. The Supreme Court has held that workers, not being members of the company, would not have any right, title or interest in the reserves and that even on the winding up of a company, the employees would not, in any event, be entitled to any share in the assets and the capital of the company. The Supreme Court gave reasons why it was unreasonable for workers to claim a share in the past accumulation of reserves. The labour force, it said, was a fluctuating body and when once the accounts of a particular year were made up and the workers given their bonus for that year, there could be no further claim for payment of bonus out of the reserves of the company in succeeding years. "To admit the claim for bonus out of reserves transferred to the profit and loss account would tantamount to allowing a second bonus on the same profits in respect of which workers had already received their full bonus in the previous year."

As regards the quantum of bonus payable, no set formula has been laid down by the Appellate Tribunal. After saying that they had been unable to discover a general formula, the Appellate Tribunal stated as follows:

"Essentially the quantum of bonus must depend upon the relative prosperity of the concern during the year under review, and that prosperity is probably best reflected in the amount of the residuary surplus; the needs of labour at existing wages is also a consideration of importance; but we should make plain that these are not the only considerations; for instance, no scheme of allocation of bonus could be complete if the amount out of which a bonus is to be paid is unrelated to employees' efforts; and even when we have mentioned

all these considerations, we must not be deemed to have exhausted the subject."

Tribunals have, however, refused to grant bonus at exceptionally high rates even where the available surplus was exceedingly large as in the case of the oil distributing companies. The Labour Appellate Tribunal observed in the case of the oil companies that in deciding on the quantum of bonus, the true nature of bonus must be kept in view. Bonus was intended to shorten the gap between the wages paid and the ideal of living wage, to aid the workmen to achieve a frugal measure of comfort for himself and his family. "Bonus must, therefore, have some relation to wages; it is intended to supplement wages and not to double or multiply it, for wages are not fixed solely on the capacity of a concern to pay. Care must also be taken to see that the bonus which is given is not so excessive that it creates fresh problems in the vicinity, that it upsets emoluments all round or that it creates industrial discontent and the possible emergence of a privileged class." Following from this decision, the Appellate Tribunal has also held that where the surplus profits are very large, the quantum of bonus should not vary with the size of the available surplus. "Beyond a certain figure of available surplus, the bonus normally would not vary."

Bonus payments have hitherto been related to the basic wages of employees and not to total earnings. This is done with a view to maintaining the differentials between different categories of employees. The addition of the same quantum of dearness allowance to the basic wages of different categories of workers has invariably disturbed existing wage differentials. In paying extra remuneration based on profits, there would be no justification for the upsetting of the normal differentials.

Another problem which has occasionally agitated workers is whether the branches of a parent body should be dealt with separately or along with the parent body. If the head office and the various branches do business as a single undertaking and maintain a common profit and loss account, profits or losses of the parent concern should determine the quantum of bonus payable. However, if each branch of the establishment is treated as a separate unit and its profits or losses are reckoned separately, the settlement of bonus will have to be done for each individual establishment separately.

In some of the voluntary schemes of profit-sharing, the bonus payable is linked to the dividend paid to shareholders. In some companies, the bonus is at a flat rate of one or two days' wages for each one per cent dividend. In others, the bonus payable varies with the rate of dividend. This practice has not been observed in bonus payments regulated by Awards. On this, the Supreme Court has stated as follows in the Muir Mills case:

"Linking of bonus to dividend would obviously create difficulties, because if that theory was accepted, a company would not declare any dividends but accumulate the profits, build up reserves and distribute those profits in the shape of bonus shares or reduce the capital in which event the workers would

not be entitled to claim anything as and by way of bonus. The workers not being members of the company would not have any right, title or interest in the reserves or the undistributed profits which would form part of the assets of the company." The linking of bonus to dividend is a shrewd managerial move inasmuch as it reduces opposition from workers to the payment of a large dividend as the size of the bonus payable to workers would depend on the size of the dividend.

Guaranteed Minimum Bonus: In recent years, even before the setting up of the Bonus Commission, a tendency has grown among workers to ask for a minimum assured bonus irrespective of profits and losses. This tendency gained ground with the conclusion of an important agreement between the Ahmedabad Millowners' Association and the Textile Labour Association in June 1955. According to that agreement, workers were assured of a minimum bonus of 4 per cent of their annual basic income for 5 years from 1953, irrespective of profits and losses. Mills which had to pay bonus to workers in spite of incurring losses in a particular year were permitted to set off such payments against profits distributable in future years. In establishments which had substantial profits, the bonus was calculated according to the formula evolved by the Appellate Tribunal, but bonus payments were subject to a ceiling of three months' wages. Any excess provision permissible under the Appellate Tribunal formula was to be placed in a reserve to be drawn upon in lean years. The termination of the agreement with the bonus payment for 1957 gave rise to a serious dispute about the continuance of the arrangement. The matter was even taken to the Supreme Court. Eventually a four-year bonus pact was signed as a purely interim measure pending the evolution of fresh principles by a Bonus Commission.

Recent claims by workers' organizations particularly for a guaranteed minimum bonus have led the Supreme Court to observe that the formula evolved by the Labour Appellate Tribunal must continue until legislation to the contrary was enacted. The Supreme Court observed in the case of the *Associated Cement Companies Ltd.*,[8] as follows: "The recommendations made by the Committee on Profit-Sharing cannot be of much assistance because there is the question of policy and principle which the legislature can more appropriately consider. If the legislature feels that the claims for social and economic justice made by labour should be redefined on a clearer basis, it can step in and legislate in that behalf. It may also be possible to have the question comprehensively considered by a high-powered Commission which may be asked to examine the pros and cons of the problems in all its aspects by taking evidence from all industries and all bodies of workmen."

It was as a result of these developments that the Central Government decided to set up a Bonus Commission to go into the matter *de novo*.

[8] 1959 I L.L.J. 644

The Bonus Commission: The Bonus Commission constituted in December 1961 consisted of a person with judicial experience as Chairman, two independent members, two members representing workers, and two members representing employers. The Commission was asked to define the concept of bonus, to determine how bonus should be calculated, to determine the conditions under which bonus payments should be made unit-wise, industry-wise or industry-cum-region-wise, and in fact to make recommendations relating to the whole process of calculation and distribution of bonus.

The Commission submitted its report in January 1964. While admitting that the profit bonus system has had little direct incentive effect, the Commission has not agreed with the contention of the employers' organizations that the system of annual bonus should be abolished as it has proved a constant source of industrial unrest. The employers' organizations had argued that payment of bonus had failed to improve industrial relations, that it had become a source of industrial strife, that profit-sharing bonus had contributed to neither profits nor productivity, that bonus had failed to serve any useful purpose, and that the system of annual bonus should be abolished and replaced, if possible, by a system of bonus related to productivity. The Bengal Chamber of Commerce recommended that "the present system of annual bonus should be replaced by progressive wage structures introduced by individual tribunals, wage boards and collective agreements or some other method of remunerating workers on the basis of productivity, attendance, etc.. which will not only provide a genuine incentive to further efficiency but would also be conducive to the industrial progress of the country." Such a demand stood little chance of being seriously considered, for, as the Commission has observed, "the terms of reference to this Commission appear to imply that the payment of bonus to workmen in industry must be regarded as an established system which has come to stay; and that bonus can, therefore, no longer be a matter of question or argument." Moreover even were it within the terms of reference of the Commission to consider such a proposition, a commission which included representatives of workers and persons sympathetic to workers' aspirations could not have been expected to return a verdict against a benefit to which workers stood heavily committed. The Commission, or rather the Commission minus the employers' representatives, has referred at length to profit-sharing schemes obtaining in the U.S.A., Japan, the United Kingdom and other countries and quoted the British Prime Minister's view expressed in the British Parliament on 8 December 1955 that profits should be more widely shared and that the British Government welcomed the development of schemes of co-partnership and profit-sharing. All this information has obviously little relevance to the problem in hand. Nobody is questioning the wisdom of having profit-sharing schemes in certain circumstances and under certain conditions. In all these advanced countries, cited as an example to us, such schemes have been wholly voluntary. A profit-sharing scheme may be commendable from many points of view. If a scheme, introduced and

sustained voluntarily, does, in fact, lead to greater productivity and greater profits and earnings, nothing would be more desirable from the point of view of both employers and workers. Where such expectations are not realized, employers have freely been discontinuing profit-sharing schemes tried out for a time. That is why a large number of schemes started in the U.S.A. and in Europe have had only a brief existence. The objection is not to profit-sharing schemes but to their being imposed on industry under the compulsion of law. The British Prime Minister, whose opinion has been quoted with approval by the Commission, also stated that the adoption of such schemes was essentially a matter for industry and that "they should not be imposed from without." Here in India the Commission has come to the unanimous conclusion that the bonus system "has little direct incentive effect." There is no serious dispute that it has not had any indirect incentive effect either, for if a substantial portion of industrial strife is related to bonus, industrial relations could not have improved and no climate would have been created in favour of higher productivity. The Commission describes the concept of bonus as "sharing by the workers in the prosperity of the concern," but surely such sharing should be of prosperity to which workers contribute in some measure. Again the Commission says that the system "has also the advantage that in the case of low-paid workers, such sharing in prosperity augments their earnings and so helps to bridge the gap between the actual wage and the need-based wage." Here then is the real reason urged for the continuation of the bonus system. Bonus must take the place of a portion of wages; it is a wage-adjustment device. The Commission says that a properly-conceived bonus system "imparts a measure of desirable flexibility to the wage structure." Bonus has little direct incentive effect; in fact it does not serve any of the purposes, namely higher productivity and higher profits, which employers in Europe and in America seek to achieve in introducing a profit-sharing scheme. If it is only a wage adjustment device and units are of uneven capacity to support a common higher wage, the obvious remedy is to have a system of minimum wages applicable to all, with bargaining for higher wages in the case of the more prosperous units. This, in fact, is what is being done in industrially advanced countries.

The Commission has stated that profit-sharing has been made compulsory in a number of Latin American countries. They are the only places where compulsion has been used in the matter of profit-sharing. Unfortunately these countries are not a model either of political stability or of industrial prosperity. To draw inspiration from them is to step from one quagmire of confusion into another.

What is good on a voluntary basis and because of the results it produces need not necessarily be so on the basis of compulsion and in the absence of demonstrable results.

Having decided that bonus payments cannot be discontinued, the Commission has proceeded to consider the mechanism of fixation and distribu-

tion of the annual bonus. The suggestion that the annual bonus based on profits should be replaced by an annual bonus linked with production or productivity has been rejected as impracticable. Some of the considerations why this is so are that in a competitive economy higher production does not necessarily mean higher profits as this depends on a number of factors distinct from the effort of workmen, such as adequate finances, timely purchase of raw materials, skill in management, skill in selling, etc. There are also other considerations, such as that when different qualities of the same product are made, it is difficult to reduce production to a common unit, that in some industries like the petroleum industry there is hardly any scope for a realistic payment by results, that in the long run linking bonus with production will lead to complications as workers might not give allowance for improvement in the methods and means of production, etc. In this opposition to linking bonus with production, employers and unions were agreed though for different reasons.

The fixing of bonus at a certain percentage of the gross profits has also been ruled out by the Commission. Any such formula would necessarily have to be applied unit-wise and the percentage would vary from industry to industry. The calculation of the percentage, the Commission says, is complicated by too many variable factors such as the type of industry, whether the industry is capital-intensive or labour-intensive, the proportion of bonus paid to profits in each unit in the past, etc. The application of a uniform percentage for determining bonus would not take account of disparities in the quantum of capital employed and in the composition of the capital, i.e., the proportions of owned capital and borrowings. Moreover, the fixation of bonus as a percentage of gross profits has the effect of according the highest priority to bonus without regard to the claims of capital for even a minimum return or to the needs of the industry.

The Commission considered the system of pooling of bonus obtaining in North-East India. According to an agreement entered into between employers and unions on 26 April 1961, each company, besides making a percentage contribution of its profits for current disbursement of bonus, pays into a bonus fund a certain percentage, varying between 1½ and ½ per cent, of the profits. Bonus funds are built up and managed on a company basis, agency house basis or a central basis. If a company makes a loss or inadequate profits in a year, the fund could be utilized for making either recoverable advances or outright payments of a limited amount of annual bonus. The Commission has come to the conclusion that such a system which might work on the basis of a voluntary agreement cannot be recommended for general application as "a bonus pooling system puts a premium on inefficiency by requiring the profits of an employer who has made profits to be distributed to workmen of loss-making units."

On the question whether bonus payment should be unit-wise, or industry-wise, or industry-cum-region-wise, the Commission has stated that payment

of bonus should be unit-wise. The workers' organizations suggested an industry-cum-region basis, by which is meant that workers of all establishments of the industry in the region, including those incurring losses, get bonus at a uniform rate, bonus being paid by each unit from its own resources. An extension of this principle propounded by the I.N.T.U.C. is that a pool would be formed out of contributions payable by profit-making establishments and that payments out of the pool would be made to all workers including those of units which have incurred losses and have not contributed to the pool. The employers' organizations generally preferred a unit-wise basis. The Commission has stated that there is force in the objection that a bonus pooling system puts a premium on inefficiency by requiring the profits of an employer who has made profits to be distributed to workmen of loss-making units. "If one of the aims of a profit-bonus system is to create in the workers a sense of belonging to the concern, to have a stake in the industry and its continued prosperity, this cannot be achieved if bonus is unconnected with, and dis-associated from, the profit made by the concern and is payable, in case of loss, from the profits of other concerns." Regarding the question whether bonus should be on a unit-wise, industry-wise or industry-cum-region-wise basis not involving any pooling of bonus, the Commission was impressed by the argument that the trading results of different units showed great variance for no fault of the managements themselves. The Commission has, therefore, recommended that the computation and payment of bonus should be unit-wise but that parties in particular cases are entitled to enter into agreements on any other basis acceptable to them.

The Commission has come to the conclusion that bonus should be subject to a reasonable maximum. It has referred, with approval, to the decision of the Labour Appellate Tribunal in the case of *Burmah-Shell and other Oil Companies*[9] that bonus must have some relation to wages and that as it is intended to supplement wages, it should not have the effect of doubling or multiplying wages. If there is a maximum so that however high the profits in a year, the workers cannot be given more than a certain rate of bonus, it stands to reason, according to the Commission, that there should also be a minimum. The Commission does not explain how a floor or a minimum, regardless of profits, is consistent with its own idea of bonus being a sharing "in the prosperity of the concern." There can be no sharing when there is no prosperity and there can also be no sharing of a prosperity which is likely to accrue only at some undefined future time. The justification for a minimum cannot be the imposition of a maximum. The imposition of a maximum must, in turn, rest on its own merits.

The maximum bonus recommended by the Commission is 20 per cent of the total of basic wages and dearness allowance paid during the year and the minimum bonus 4 per cent or Rs. 40 per worker whichever is higher. Where

[9] 1953 II L.L.J. 246

the amount allocable as bonus under the Commission's formula exceeds 20 per cent of the earnings of the workers, the excess up to a limit of a further 20 per cent is to be carried forward to be "set-on" in the succeeding years up to a maximum period of the next four years. Where there is no available surplus or the amount of the available surplus allocable as bonus is a sum less than 4 per cent of the annual earnings, the whole of the quantum of 4 per cent should be carried forward and "set-off" in the succeeding years up to a maximum period of four years. In making calculations for the succeeding years, the amount of set-on or set-off brought forward from the earliest year should first be taken into account.

The change in the basis of the calculation, namely, from basic wages to the total of the basic wages and dearness allowance, has served to increase the quantum of the maximum bonus. Hitherto a bonus of about six months' basic wages has been considered to be about the maximum awardable, however prosperous the concern and whatever be the "available surplus." At Rs. 32.50, which is the monthly basic wage widely prevalent for unskilled labour in Bombay, a six months' bonus would amount to Rs. 195. The current rate of dearness allowance (April 1965) in Bombay is about Rs. 123.50 per month. Thus the total of basic wages and dearness allowance comes to Rs. 156 per month. The annual wage would amount to Rs. 1,872 and 20 per cent of it to Rs. 374. This amount has already gone up to Rs. 450 in the light of the higher dearness allowance obtaining in November 1966. It is, therefore, obvious that the new formula has had the effect of pushing up the amount of the maximum bonus payable. Another important consequence of the new formula is that it tends to reduce the differential between unskilled and skilled workers considerably. For instance, if an unskilled worker gets a basic wage of Re. 1.25 per day or Rs. 32.50 per month, a skilled worker in the same establishment would get Rs. 8.00 per day or Rs. 208 per month. A month's bonus under the existing scheme and under the Commission's recommendation will yield the following bonus ratios between the unskilled and skilled workers:

	Unskilled	*Skilled*	*Bonus ratio*
Existing scheme	Rs. 32.50	Rs. 208	1 : 6
Commission's scheme	Rs. 156.00	Rs. 332	1 : 2

The Commission has then proceeded to deal with the mechanics of the calculation. The first step in the calculation is the ascertainment of the gross profits of the accounting year. Regarding the claim of employers that extraneous profits, that is, profits unrelated to the efforts of workmen, should be excluded from the computation of the gross profits, the Commission says that this question "has led to much controversy and litigation as to what should be considered as extraneous profits, whether income from investments, income from direct commission earned by companies in the case of import agency companies, income from rent of properties, profits on purchase and

sale of exchange, etc., are extraneous income." After saying that the practice of excluding extraneous profits was based on the Labour Appellate Tribunal's decision in the *Shalimar Rope Works case*,[10] the Commission has said that in the same company workmen working in lines of business which have made a profit and in those which have made a loss get bonus without distinction and that "to attempt to scan too closely profits unrelated to the efforts of workmen serves little useful purpose." This is a conclusion unsupported by any reasoning. The illustration cited by the Commission refers to the business of the undertaking though certain lines might be producing losses instead of profits. They are, in any case, all lines of business in which the workmen are engaged. On that score why should profits earned which have no bearing on the work done by the workmen be deemed to be profits towards which they have contributed?

From the gross profits are to be deducted a number of "prior charges." The first of these is depreciation, and after examining various suggestions in this respect, the Commission has stated that the normal depreciation admissible under the Income-tax Act, including multiple shift allowance, should be the charge to be deducted.

The next prior charge is the income-tax and super-tax at standard rates. The development rebate has not been allowed as a prior charge before and the Commission too says that it should not be allowed to be deducted.

The claim for a rehabilitation provision in the bonus calculations has been disallowed by the Commission on what appear to be insufficient grounds. Under the existing Full Bench Formula, suitable provision for rehabilitation is allowed to be deducted as a prior charge. The Commission says that "claims in respect of rehabilitation usually drag on before industrial tribunals for a very long time and bonus disputes which normally should be settled across the table by collective bargaining result in prolonged litigation which is expensive to both the employers and the trade unions and does not make for industrial harmony and peace." Then it proceeds to give a number of instances to illustrate that bonus cases have dragged on for years without final determination. True, bonus cases have taken much time for settlement, but the settlement of other disputes too has taken time. The Commission's indictment of the delay involved is in fact a condemnation of the whole philosophy of compulsory arbitration. Cases, whether pertaining to wages or bonus or any other matter, have gone on for years. On that score, have unions which "have unanimously opposed not only the present formula and procedure for determining rehabilitation as unreal, dilatory and tending to deprive workers of fair bonus" chosen to demand that all their disputes should be settled across the table through collective bargaining and not through adjudication?

To meet the charge of delay, some of the employers' organizations suggested that a certain percentage of the surplus profits after meeting other

[10] 1956 II L.L.J. 371.

charges be allowed for rehabilitation, replacement and modernization. Others suggested some 10 per cent of the gross profits as rehabilitation allowance. It will be recalled that the Committee on Profit-Sharing had recommended that 10 per cent of net profits should be compulsorily set aside for reserves in order to provide for repairs, rehabilitation and modernization of plant and equipment. After coming to the conclusion that "no satisfactory method of calculating rehabilitation requirements can be devised," the Commission solved the difficulty of determining rehabilitation by deciding that no provision need be made for the purpose. If a difficulty cannot be squarely faced, it would be best to ignore it.

The Commission has recommended that the return on paid-up capital and on reserves used as working capital should be 7 per cent and 4 per cent against 6 per cent and 4 per cent obtaining now. The demands of the employers for higher rates and of the workers for allowing no return on reserves were both rejected as unreasonable.

The proportion of the available surplus to be allocated for bonus has been recommended to be fixed at 60 per cent. The balance left with the employer would, therefore, be 40 per cent. Under the present practice the Tribunal has discretion to fix the proportion of the available surplus to be allocated for bonus. The level of wages in the concern is an important factor which is taken into consideration in such fixation. The Commission says that this leaves an element of uncertainty in the determination of bonus and that "it is not necessary in each case to take into consideration the prevailing level of remuneration in the concern in allocating a proportion of the available surplus as bonus." It is true that wage determinations by wage boards have introduced a measure of uniformity in the different concerns within the same industry, but they certainly have not succeeded, and perhaps cannot for a long time to come succeed, in reducing disparities in wages as between different industries. For instance, the average *per capita* annual earnings of workers earning less than Rs. 200 per month during 1960 were Rs. 1,927 in iron and steel, Rs. 1,547 in cotton textiles, Rs. 896 in matches and Rs. 771 in tanneries and leather finishing. If, as the Commission has stated, bonus, which is a sharing by workers in the prosperity of the concern, has "the advantage that in the case of low-paid workers such sharing in prosperity augments their earnings and so helps to bridge the gap between the actual wage and the need-based wage," the total quantum of money to be distributed as bonus and the proportion it bears to the available surplus will naturally have to vary from industry to industry and perhaps even from unit to unit if a common wage structure does not apply to all units in an industry. This obviously is a far more difficult matter than a uniform and mechanical application of a rule-of-thumb percentage of 60. If the wages are low, the distribution of more than 60 per cent of the available surplus may be justified; if the wages are high, the distribution of 60 per cent may not be necessary to raise the total earnings to the need-based wage level or even the living wage level. It is true that a fixed

percentage has the merit of reducing the area of conflict, but if the intention is to bridge the gap between the actual wage and the need-based wage, a more correct way of dealing with the problem of distribution would have been to lay down that the employees' share should be not less than 40 and not more than 60 per cent of the available surplus, or any other figures for the lower and upper limits, the exact proportion being settled by mutual negotiation or adjudication. There are certain matters in which excessive simplification can lead to injustice as between the parties—a reminder that bonus is not a subject that can lend itself to a simple and common formula applicable to all industries and to all units in an industry.

The formula recommended by the Commission is to apply equally to establishments in the public sector (not departmentally run) which compete with establishments in the private sector. The test whether a public sector undertaking competes with establishments in the private sector is whether not less than 20 per cent of the gross aggregate sales turnover of a public sector undertaking consists of sales and services or products which compete with products or services produced or sold by units in the private sector.

The other recommendations of the Commission on various matters of detail need not detain us as they have little bearing on the main principles underlying the scheme recommended by it. A minute of dissent recorded by an employers' representative, Shri N. Dandekar, highlights a number of easy paths trodden by the Commission and deserves notice. Shri Dandekar has dissented from the majority decision in respect of a number of points. The first is the disallowance of the Super Profits Tax as a prior charge. After examining why the reasons given by the Commission in support of disallowance are untenable, Shri Dandekar has stated that "the only true principle can be that all direct taxes, whatever their mode of computation, must come into the reckoning as diminishing the available surplus to the extent of their net incidence." The next point on which Shri Dandekar has differed is in respect of the rehabilitation allowance. He has quoted from a recent study on replacement cost in industry carried out by the National Council for Applied Economic Research in which that Council has recommended that depreciation should be provided in the accounts of companies on a replacement cost basis and that such provision should be made obligatory by statute. He says that the majority of his colleagues do not dispute the essential merits of the claim and that the difference is only in regard to the manner in which the claim can be computed. Then after demolishing the reasons given by the majority for disallowing the claim, Shri Dandekar has suggested that a specific allowance for rehabilitation of plant, machinery and buildings and a replantation allowance should be allowed as a prior charge against profits. The third point on which he has dissented relates to the return on paid-up capital and reserves. He has pointed out that the return of 6 per cent and 4 per cent allowed in the Full Bench Formula tax free were in fact the equivalent of 8.5 per cent taxable and 5.7 per cent taxable against the 7 per cent and 4 per

cent both taxable now recommended by the Commission. Shri Dandekar has emphasized that the new rates, though claimed by the Commission to be an improvement, are in fact lower than the rates allowed in the Full Bench Formula. He has then referred to the increase in the Bank rate, in the yield on first class debentures and in first class preference shares and said that on this score alone the 8.57 per cent taxable and 5.7 per cent taxable, allowed in the Full Bench Formula, would be the equivalent of 9.5 per cent and 6.25 per cent in 1963. Bearing these figures in mind, he has suggested a return of 8.5 per cent taxable and 6 per cent taxable on paid-up capital and reserves.

Shri Dandekar has also expressed the opinion that "to continue indefinitely with the profit bonus would, in the long run, be unwise alike for the employees, the employers, and the consumers, that is, for the country as a whole. The practice of giving an annual bonus to workmen, when so entrenched as to become a justiciable right, is a contradiction in terms. It wholly ignores the production and productivity aspects of the country's industrial problem; in a developing economy it puts a premium on those, both employers and employees, who shirk hard work, and it thrives entirely at the cost of the consumer."

The Government considered the recommendations of the Commission and announced its decision as to the manner in which it proposed to implement them statutorily. In Government's opinion all direct taxes for the time being in force should be deducted as prior charges in the calculation of the available surplus. Thus Shri Dandekar's dissent on this point has been fully accepted. Tax concessions given to industry to provide resources for future development should not be utilized for payment of larger bonuses to employees; on the other hand it should be ensured by law that the amounts involved in such tax concessions are in fact used only for the purposes for which the tax concessions are given. Subsidies given by Government are also not to be taken into account in working out the gross profits for the purpose of payment of bonus. As regards the return on capital that could be deducted as prior charge, the actual rate payable on preference share capital, 8.5 per cent (taxable) on paid-up equity capital and 6 per cent (taxable) on reserves are to be allowed in the calculations. For banks the percentages are 7.5 and 5, both taxable. The bill subsequently prepared by Government led to sharp differences of opinion.

In accordance with its announced intention, the Government hoped to be able to introduce a bill relating to bonus in the 1965 budget session of Parliament, but as this did not become possible, the Government issued an Ordinance (a constitutional device for emergency legislation when Parliament is not in session) on 29 May 1965. Soon a storm of protest arose over the promulgation of the Ordinance on the complaint that in regard to so controversial a matter the Executive had bypassed democratic conventions and taken upon itself the responsibility of finally settling the terms of the legislation. When an ordinance is issued, the weight of public opinion has little chance of

influencing the Government, whereas if a bill introduced in Parliament is put through the normal processes of legislation such as a general debate, several readings of the bill, amendments sponsored by members, and possibly a select committee of Parliament, even a Government with a steam roller majority has to make some adjustments in its thinking and some concessions in its methods however adamant and firmly-set it might outwardly appear to be. The Bonus Ordinance led to much agitational thinking on the part of both employers and workers and many representations were submitted to the Government.

The Bonus Ordinance has since (September 1965) been replaced by an Act of Parliament with only minor clarificatory modifications. A detailed representation submitted by the Council of Indian Employers to the Government has obviously not succeeded in persuading the Government to meet, even partially, some of the employers' main objections to the provisions of the Ordinance. This was only to be expected. The promulgation of the Ordinance had the effect of tying down the hands of the Government in regard to the controversial provisions. If, from the weight of opposition voiced by employers, it could be inferred that several of the provisions of the Ordinance were more favourable to workers than to employers, it could hardly be expected that the Government would be bold enough to change the provisions of the law, when once the latter had temporarily been brought into force, to the disadvantage of workers.

The representation made by the Council of Indian Employers brings out in considerable detail the numerous difficulties that are likely to arise in the implementation of the legislation. For this reason their objections require brief notice even if one is not inclined to accept all of them at their face value.

The payment of a minimum bonus of 4 per cent of the total wages or Rs. 40 per worker, whichever is more, has come in for prominent criticism. The employers say that this is nothing but a straight increase in wages which would make losing concerns lose further and seriously jeopardize the position of marginal units in many industries such as manganese, coir, cashewnut, etc. The grant of minimum bonus will be particularly burdensome in plantations, jute, and coal-mining. In the plantation industry, since wages are fixed on a family basis, the burden of the bonus will be 8-11 per cent and not 4. In the jute industry bonus under the new law will be in addition to the minimum bonus already granted under the recommendations of the Central Wage Board. Similarly in coal-mining the new bonus will be in addition to a statutory attendance bonus already available. The additional burden will press heavily on small and marginal units.

Failure to provide for a rehabilitation allowance, largely because of the inability of the Bonus Commission to evolve a simple formula for calculation of its quantum, is the next objection strongly urged by employers. This, they say, is bound to come in the way of the modernization of plants which is absolutely necessary to enable the country to compete in international mar-

kets, which are being increasingly captured by technologically advanced industries flourishing in countries suffering from few legislative inhibitions. The Labour Minister tried to explain in the course of the debate in Parliament that the development rebate had been allowed as a prior charge largely to compensate for the failure to provide for a rehabilitation allowance, but he avoided going into the question whether the one was an acceptable substitute for the other. The development rebate, which is available only for one year after the installation of new plant, is based on current prices, while the rehabilitation allowance asked for is particularly needed by industries with old machinery, which would not be entitled to any development rebate and which would have to buy new plant on much higher prices than the cost recouped through the statutory depreciation.

Another provision which has come under fire is the first proviso to sub-section (1) of section 34 (since renumbered in the Act as sub-section (2) of section 34) which seeks to prevent the ratio of the allocable surplus to the gross profits which ruled in the base year from deteriorating in subsequent years to the detriment of workers. Apart from its alleged inequity in normal cases, this involved provision, it is claimed, will lead to absurdities in special cases. If, for instance, in the base year an employer, ignorant of coming complications, had chosen to give bonus equal to the total gross profits for any special reason, he might now, under the new dispensation, be compelled to give away the whole of the gross profits as bonus, however high they might be. Similarly, if a losing concern had in the base year given a bonus for any special reason, "the ratio in such cases would be infinity." Protection of the higher rate of bonus given in the past by old-established units on a voluntary basis would also lead to discrimination inasmuch as a unit with no bonus history would now be required to give bonus only according to the new law.

The provision which enables the employees of individual establishments to enter into agreements with their employers for granting bonus under a different formula will enable unions constantly to mount an agitation for improvement of the bonus terms.

The rates of return allowed by the law on equity capital and reserves, namely 8.5 per cent and 6 per cent, have been opposed as being no longer sufficient in view of the increase in the bank rates since the fixation of these percentages. The rates of return cannot be fixed for all times; they may have to move up or down depending on the bank rate and the money and investment markets. Such flexibility would have been more easily available under adjudication than under a fixed law.

From this description of the objections raised by employers, it should not be inferred that workers had no complaints of their own. The fact that, unlike employers, they did not make sustained efforts to get the terms of the Bonus Ordinance changed might be some indication of a measure of satisfaction that they had gained from certain provisions, especially those relating to the payment of a minimum bonus and the calculation of bonus in terms of total

wages rather than basic wages. As the Labour Minister went on repeating time and again, 4.5 million workers would receive bonus for the first time because of the minimum bonus provision, and the working classes as a whole would gain to the extent of Rs. 35 to 45 crores annually as a result of the provisions of the legislation. The maximum disbursable bonus of 20 per cent of total wages would, in the case of the least skilled worker, be at least double the maximum he could have expected under the Appellate Tribunal formula. For instance, an unskilled worker drawing a basic wage of Rs. 32.50 and a dearness allowance of Rs. 127.50 would be entitled to Rs. 384 as 20 per cent of his total wages whereas he could not have got more than 6 months' basic wages, that is, Rs. 195, in the most prosperous concern under the old arrangement. In spite of their jubilance, which they tried to conceal as well as they could, labour leaders and members of Parliament advocating labour's cause during the passage of the Bill took formal exception to several of the provisions of the Ordinance that did not fully measure up to their expectations. They attacked the Government for virtually giving a veto power to one of the employers' representatives on the Bonus Commission in several important matters. They questioned the provision which allowed the development rebate as a prior charge on the ground that it amounted to as much as 35 to 40 per cent of the capital cost. Supporters of workers' interests claimed that in some cases the existing quantum of bonus would be reduced and succeeded in getting a protective provision included in section 34. Some criticized the rates of return on capital and reserves while others felt that many workers had been excluded from the purview of the law. The exemption granted to certain types of public sector establishments also came in for criticism. Nevertheless it was clear that members of Parliament advocating workers' interests were not attacking the bill seriously.

It will be recalled that prolonged attempts were made in 1948 and 1949 to evolve a profit-sharing law based on the recommendations of the Profit-Sharing Committee. That scheme was to have been restricted in its application to a few well-developed industries. Even so, consideration at the very highest levels of Government showed that a uniform and inflexible law was bound to do considerable harm to individual units and to produce increased industrial unrest. The conclusions then reached must have been completely forgotten when the Union Labour Minister decided to set up a high-powered Commission. When the decision to set up a Commission was taken, it could have been foreseen that a tri-partite Commission composed largely of the interests vitally affected by the conclusions and pulling in opposite directions was unlikely to make a scientific and unbiased study of so difficult a problem and that an unsatisfactory compromise would only accentuate discontent. So even if the Government had felt urged to take steps to formulate a legislation, the first step might well have been the setting up of a committee of independent and unbiased experts rather than a committee of partisan members to study the numerous problems and implications of a

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statutory bonus scheme. The conclusions of the experts could have been placed before a representative tri-partite committee for criticisms and suggestions. Even if a representative committee arrives at an agreed compromise, legislation might lead to many unpleasant surprises, for a compromise, however well-meant, cannot provide for every difficult situation. Compromises are excellent tools of collective bargaining by parties who know their responsibilities and limitations, but they are poor substitutes for objective and scientific studies of complicated problems meant to serve as a basis for legislation covering the entire field of industry.

The Labour Minister refused to accept a large number of amendments tabled by the opposition. The number of such amendments was over 100 in the Rajya Sabha alone. That difficulties might arise in the course of implementation was not denied by the Labour Minister, who said that clause 37 would enable the Government to remove all such difficulties. He also gave an assurance that if necessary Government would bring an amending bill later on. He derived satisfaction from the fact that there had been criticisms from both sides in equal measure which, as he put it, was proof enough that the bill "represented the golden mean."

The bonus legislation cannot harm well-established and prosperous concerns in industry proper; nor will it very much help the workers employed in such concerns. On the other hand it may have widespread repercussions on marginal units and financially weak industries which are only just limping along. It is in such units that the burden of the minimum bonus will be most felt. Many small and marginal units may not be able to implement the law in its entirety, and workers may be forced to overlook violations of the law as the only possible alternative to unemployment.

Experience alone can tell us whether the experiment of legislation in a field like bonus, where flexibility is the keynote of success, is at all likely to be a success. If, as many now fear, the legislation increases litigation over bonus, reduces resources for rehabilitation and development, jeopardizes the growth of many struggling industries, threatens the existence of marginal units, and undermines the economics of key industries like plantations, jute and coal, few would be prepared to excuse the Government for having rushed headlong into a field which others in the past have feared to tread.

Since the writing of this section the Supreme Court has given its verdict on the constitutionality of some of the provisions of the Payment of Bonus Act, 1965. A brief summary of the decision has been given in the Postscript.

CHAPTER XII

MAJOR PROBLEMS — OTHER MATTERS

Reinstatement: Reinstatement of dismissed workers is one of the most frequent causes of disputes since the advent of compulsory adjudication. In the past employers found it comparatively easy to get rid of unwanted workers as dismissals were governed by the ordinary civil law of the land and the aggrieved employee had to sue his employer in a court of law for damages and not for any other relief. Some check on the employer's right to dismiss his workers was imposed, for the first time, by the Bombay Trade Disputes Act, 1938 which provided for the framing of standing orders for regulating matters affecting the day-to-day employer-employee relations including discharges and dismissals. While this Act regulated the procedure to be observed before ordering dismissals, it did not interfere with the employer's right to dismiss his workers. The employer's right in this regard was affected, for the first time, by the National Service (Technical) Personnel Ordinance, 1940. Under that Ordinance, technical personnel taking up employment in the national service on the direction of a National Service Labour Tribunal could not be discharged by their employer; nor could they leave employment without previous permission. The Essential Services (Maintenance) Ordinance, 1941, which applied to employments under Government and to certain essential services and employments, restricted the right of employers to discharge their workers. These were war-time measures, not meant to apply after the termination of the war. The Industrial Employment (Standing Orders) Act, 1946 provided for the framing of standing orders to regulate the relations between employers and workers. The Act required the framing of standing orders regarding the procedure for the discharge of workers and also clarifying as to what constituted misconduct. In spite of these steadily increasing safeguards for workers, the right of reinstatement as a normal remedy did not accrue until provision was made for compulsory adjudication under the Industrial Disputes Act, 1947.

In one of the earlier cases after the advent of the Industrial Disputes Act, 1947, viz., *Western India Automobile Association* vs. *The Industrial Tribunal, Bombay*,[1] the question arose whether a dismissed worker was entitled to reinstatement or only compensation. The Federal Court held that, unlike ordinary civil courts, industrial tribunals were not fettered by the law of master and servant and that they could, in effect, create fresh law based on social justice. It was, therefore, open to a tribunal to order reinstatement

[1] A.I.R. 1949 FC 111.

of a dismissed worker. This view was later on upheld by the Supreme Court in various cases including the one of *State of Madras* vs. *C. P. Sarathi.*[2]

Role of Tribunals in Reinstatement Cases: Though the right of industrial tribunals to direct reinstatement was thus recognized and affirmed, the question arose as to the role the tribunal should play in a claim for reinstatement. The Labour Appellate Tribunal decided in the *Buckingham and Carnatic Company Limited* vs. *Their Workmen*[3] that industrial tribunals should not set themselves up as courts of appeals but that they should act as supervisory bodies exercising what would ordinarily be regarded as powers of revision for correction of basic errors or perverse findings. It followed, therefore, that a tribunal was not to interfere so long as the decisions of the management were *bona fide* and free from malice or unfair labour practices.

The circumstances in which tribunals should order reinstatement were summarized by the Labour Appellate Tribunal in the same case as follows:

"The decision of the management in relation to the charges against the employee will not prevail if (*a*) there is want of *bona fides*, or (*b*) it is a case of victimization or unfair labour practice or violation of the principles of natural justice, or (*c*) there is a basic error of facts, or (*d*) there has been a perverse finding on the material."

These criteria were largely accepted and made more precise by the Supreme Court in *Indian Iron and Steel Company Ltd.* vs. *Their Workmen*[4] as follows:

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited, and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to give appropriate relief. In case of dismissal on misconduct, the tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere

(*i*) when there is want of good faith,
(*ii*) when there is victimization or unfair labour practice,
(*iii*) when the management has been guilty of a basic error or violation of a principle of natural justice, and
(*iv*) when on the materials the finding is completely baseless or perverse."

While this case laid down certain specific circumstances in which interference by the industrial tribunal would be justified, the Supreme Court laid

[2] 1953 I L.L.J. 174. [3] 1951 II L.L.J. 314 [4] 1958 I L.L.J. 260.

down in *Martin Burn Ltd.* vs. *R. N. Banerjee*[5] what the limitations of the Labour Appellate Tribunal and of tribunals were in interfering with the action taken by the management. The Court said that what the tribunal had to do was to determine on the materials available whether a *prima facie* case had been made out by the management. What a *prima facie* case was, it explained as follows:

"A *prima facie* case does not mean a case proved to the hilt, but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a *prima facie* case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record."

The Supreme Court had again to deal with the same matter, namely, the limitations on the powers of the industrial tribunal in *Balipura Tea Estate* vs. *Its Workmen*.[6] It said:

"... The tribunal misdirected itself in so far as it insisted upon conclusive proof of guilt to be adduced by the management in the enquiry before it. It is well settled that a tribunal has to find only whether there was justification for the management to dismiss an employee and whether a case of misconduct had been made out at the inquiry held by it."

Later on the Court said:

"It (tribunal) had not got to decide for itself whether the charge framed against the workman concerned had been established to its satisfaction; it had only to be satisfied that the management was justified in coming to the conclusion that the charge against the workman was well-founded. If there had been a finding by the tribunal that the management had been actuated by any sinister motives, or had indulged in unfair labour practice, or that the workman had been victimized for any activities of his in connection with the trade union, it might have had reasons to be critical of the inquiry held by the management. But that is not so on the findings in the award itself."

These cases clearly establish the proposition that it is not open to the industrial tribunal to examine the evidence in the light of its own under-

[5] 1958 I L.L.J. 247 [6] 1959 II L.L.J. 245.

standing and appreciation. So long as the action of the management is in accordance with the accepted procedure for the holding of domestic enquiries and without violation of the principles of natural justice, the tribunal should not interfere with the action taken by the management unless any of the four circumstances justifying intervention enunciated in the Indian Iron and Steel Company case is present. The tribunal is not to constitute itself as an appellate authority over the decision of the management; it should not substitute its own assessment of the evidence for that of the management. Moreover the degree of proof that the tribunal should seek to find in the proceedings of the enquiry is only that of a *prima facie* case and not of a case proved to the hilt. So long as the tribunal is satisfied that the case bears no mark of any of the circumstances indicating want of good faith and that a *prima facie* case in support of the management's action exists, it has no powers of interference. This approach is based on the principle that while an employee should be protected against the vindictive or capricious action of the management, the management should, in the interests of industry itself, have adequate powers for maintaining efficient administration and the requisite amount of discipline in the establishment.

As regards interference with the punishment imposed, the management ordinarily has the right to decide what the appropriate punishment should be in a particular case. Industrial tribunals will not interfere with the punishment imposed unless it is so unjust that a remedy is clearly called for.

The powers of industrial tribunals in regard to cases of dismissals and discharges of workers after a domestic enquiry are sought to be enlarged by a bill recently introduced in Parliament. The bill seeks to amend the Industrial Disputes Act in order "to empower labour courts and tribunals to review cases of dismissals and discharges." These enhanced powers, when enacted, will clearly arm tribunals with the powers of an appellate authority in relation to such cases. Employers' organizations have already protested that this will weaken discipline still further and make efficient working of industrial establishments extremely difficult.

In cases of proved victimization or unfair labour practice on the part of the employer, reinstatement is invariably ordered with full or half pay for the period of removal from service. The terms 'victimization' and 'unfair labour practice' have not been defined in any enactment in this country. Victimization may be said to be some action on the part of the employer prejudicial to the worker on some pretext other than the real reason. In countries where unfair labour practice is defined under a labour law, a number of practices on the part of the employer are brought under the definition. In the absence of statutory definition, industrial tribunals generally take into account the following as evidence of the commission of an unfair labour practice:

(*i*) discrimination between workers;

(*ii*) singling out union leaders or members;
(*iii*) anti-union statement made at the time of discharge or shortly prior thereto;
(*iv*) relative significance of the alleged infraction;
(*v*) whether others ever committed the same infraction without similarly being punished to the extent of discharge;
(*vi*) failure without explanation to introduce specific evidence in support of a general accusation or reason for discharge or to call witnesses who have personal knowledge of the basis of denial;
(*vii*) failure of an employer to hold an investigation;
(*viii*) failure to afford an employee the opportunity to defend himself, and
(*ix*) uneven application of the company's rules.

Though victimization for trade union activities would call for prompt reinstatement, the mere fact that dismissed workers are trade unionists is irrelevant if they are dismissed for other valid reasons.

Standing orders now regulate the procedure for ordering dismissals as also the acts and omissions which are treated as misconduct calling for punishment including dismissal in extreme cases. The list of acts and omissions amounting to misconduct is long, and in awarding punishment, the employer has to take into account the gravity of the misconduct. Before a worker is punished, particularly with dismissal, a proper enquiry has to be made by the employer. The charges brought against the worker have to be set out in writing and the worker has to be given a reasonable opportunity of defending himself. If the rules of natural justice are not observed, dismissals are liable to be set aside.

Ordinarily a management acting in a *bona fide* manner and with knowledge and experience of the problems confronting it in the daily working of the concern is deemed to be well qualified to judge what the appropriate punishment should be in a particular case. With a punishment so imposed, there will be no interference by industrial tribunals. This is, however, subject to the condition that the punishment inflicted is not unduly harsh or excessive.

Dismissal and Reinstatement of Striking Workers: The question whether workers who go on a strike should be taken back on the termination of the strike is sometimes a difficult one to decide. Where the strike is legal and justified, the employer is bound to take back his workers, and if he fails to do so, the tribunal will order reinstatement. When a strike is not illegal, the employer is not entitled automatically to put an end to the service of his workers.

It is not in every case where a strike is illegal that the employer can exercise the right of dismissal. Even though a strike may be illegal, if the workmen have remained peaceful and non-violent, mere participation in the

strike does not justify the extreme punishment of dismissal or the rejection of the strikers' claim for reinstatement.[7]

It is not in the interest of the industry or of the workmen themselves that there should be a wholesale dismissal of all the workmen who merely participated in a peaceful strike. The punishment of dismissal or termination of service has to be imposed only on such workmen as had, not only participated in the strike, but had fomented it or had been guilty of violence or of doing acts detrimental to the maintenance of law and order in the locality. In order to determine the punishment which must be meted out to each workman, the tribunal has first to determine the conduct of which he was guilty, namely, whether he was only a peaceful and silent worker, or whether he was an active and violent striker. That can only be done when a regular enquiry has been held after furnishing a charge-sheet to each one of the workmen sought to be dealt with.[8]

Dismissal as a punishment for joining in an illegal strike is justified, even when the workman has remained peaceful, if the Standing Orders expressly provide for such punishment.[9] However, there should be no discrimination as between workers, and to dismiss only some of the peaceful workers while the majority are taken back amounts to unfair labour practice.[10]

Even when a strike is legal and justified, if the striking workmen resort to violence, they are liable to be dismissed if the charge is proved after a proper enquiry.[11] Each workman charged with acts of violence must be given a reasonable opportunity to show that he did not take part in the violence.

Physical obstruction of loyal workmen during a strike so as to prevent them from attending the place of work is serious misconduct for which dismissal is the proper punishment.[12] Further, on the proved facts of grave misconduct on the part of the dismissed workmen, the finding of the tribunal as to the unhappy relations between the employer and the union did not justify it in arriving at the inference that the employer was actuated by the desire to victimize the workmen for their union activities.

The question of reinstatement of workers whose places had been filled during a strike was considered by the Labour Appellate Tribunal, which quoted with approval the following passage from Ludwig Teller's book on Labour Disputes and Collective Bargaining:

"The Supreme Court of the United States has settled it that an employer, who has committed no unfair labour practice, against whom a strike has

[7] Punjab National Bank Ltd. *vs.* Their Workmen, A.I.R. 1960 SC 160.

[8] India General Navigation and Railway Co. Ltd. *vs.* Their Workmen, A.I.R. 1960 SC 219.

[9] Model Mills Nagpur Ltd. *vs.* Dharam Das, 1958 I L.L.J. 539.

[10] Bata Shoe Co. (Pvt.) Ltd. *vs.* D. N. Ganguly, A.I.R. 1961 S.C. 1158.

[11] Swadeshi Industries Ltd. *vs.* Its Workmen, 1960 II L.L.J. 78.

[12] Bengal Bhatdee Coal Co. *vs.* Ram Prabesh Singh, 1963 I L.L.J. 291.

been declared is not obliged to cease the conduct of his business, but may employ others to take the place of the strikers, and he may promise to retain such employees in his employ even after the termination of the strike; under such circumstances the employer's obligation to reinstate extends only to such of the striking employees whose places have not been filled during the strike. Where, however, the strike is the result of an unfair labour practice, the employer is under an obligation to discharge those employees hired to take the place of the strikers, and to offer to reinstate the striking employees."

In the particular case,[13] the question for the Labour Appellate Tribunal was: Whether a management is in law entitled to fill up the places of the workers who have participated in the strike without terminating their employment in such manner as is allowed by law. The strike had been held to be not merely unjustified but wanting in *bona fides* and launched on extraneous considerations. The Labour Appellate Tribunal held that following the decision in *Ram Krishna Iron Foundry* vs. *Their Workers*[14] an employer would in such exceptional cases have the right to dismiss a workman joining an unjustified strike. True, the workman had not been dismissed in accordance with the requirements of the Standing Orders as only a notice had been put up that all those absent without leave would be deemed to have terminated their employment with the Company, followed by another one stating that certain persons were treated as discharged. The Appellate Tribunal held that it would have been open to the management not merely to discharge but to dismiss the workmen and that notwithstanding the non-observance of the Standing Orders for ordering dismissal, the notice of discharge in no way vitiated the discharge. In the result those whose places had been filled up by a certain date were not granted the relief of reinstatement.

The right to reinstatement of workers whose places are filled up during a strike does not appear to have come under the scrutiny of the Supreme Court. Whether the position mentioned in Ludwig Teller's book would be approved in its entirety is somewhat doubtful because of the considerable restrictions placed in this country on the right of an employer to dismiss a striking worker. Nevertheless employers cannot remain without any remedy indefinitely when the strike is not merely unjustified but is prolonged unreasonably and regardless of reasonable overtures on the part of the employer. In such a situation, dismissal after holding a proper enquiry on the basis of a charge-sheet as laid down in the Standing Orders would seem preferable to discharge on a mere notice demanding return to work by a fixed date.

If it is proved that workers were discharged owing to victimization or unfair labour practice, all of them are entitled to reinstatement irrespective of

[13] Spencer and Co. Ltd. *vs.* Their Workers, 1956 I L.L.J 714

[14] 1954 II L.L.J. 372.

whether they were permanent or temporary. This was the decision in the dispute between the Sholapur Motor Transport Ltd., Poona, and their workmen.

Workers cannot automatically be discharged for mere absence without leave. In such cases, a proper charge-sheet has to be framed and an opportunity given to the person concerned to show cause against dismissal. The punishment to be imposed will depend upon the circumstances of each case.

Removals for go-slow are seldom interfered with. In the dispute between Ashok Motors, Ltd., and their workmen, the industrial tribunal observed that the workers had been guilty of persistent and concerted go-slow tactics deliberately practised and that the termination of their employment could not be questioned as either unfair or unjustifiable. The fact that there has been a deliberate go-slow has naturally to be established by the employer. A false allegation of go-slow in order to provide an excuse for getting rid of an unwanted worker is, however, not to be tolerated.

The normal relief in cases of wrongful dismissal is reinstatement, but there can be exceptions to this rule. In cases where discipline in the undertaking might be in jeopardy or where employer-employee relations might be adversely affected by reinstatement, the payment of compensation has been ordered in preference to reinstatement. The Labour Appellate Tribunal has observed as follows in the *Buckingham and Carnatic Mills* case:

> "The normal rule in such cases should be reinstatement, but in so ordering the Tribunal is expected to be inspired by a sense of fair play towards the employee on the one hand and considerations of discipline in the concern on the other. The past record of the employee, the nature of his alleged present lapse, and the grounds on which the order of the management is set aside are also relevant factors for consideration. It is not possible to lay down rules which could be regarded as exhaustive on the subject. Each case would have to be considered on its merits."

Where compensation is paid as an alternative to reinstatement, it is invariably substantial. Six months' wages or even more is not unusual. In a few cases where the worker concerned was of advanced age, compensation at the rate of half a month's salary for each completed year of service was ordered.

The system of compulsory adjudication has ensured to workers substantial security of service. The right to reinstatement through legal process has been secured to an extent that is rarely found in other countries. Consequently, there have been complaints from employers that this safeguard has been overdone and that industry is finding it very difficult to get rid of undesirable elements that come in the way of the orderly working of industry. There have also been complaints that indiscipline has increased as a result of the security of tenure enjoyed by workers. Though individual disputes are not covered by the Industrial Disputes Act, it is the easiest thing for them to be converted

into industrial disputes by their being taken up by a union or a group of workers. In these days of acute rivalry between unions, hardly any individual case goes without being sponsored by one union or another. It is quite possible, therefore, that the legal protection afforded through adjudication has placed real difficulties in the way of the working of a number of industrial establishments.

Problems of Representation and Recognition: The absence of an adequate statutory machinery for the certification of the representative union or the collective bargaining agent is one of the major deficiencies in the arrangements for dealing with industrial relations in the country. Unions are often "recognized" voluntarily, but this means little more than the willingness of the employer to talk to the representatives of the union or to send replies to letters addressed by the union. There is no presumption in such cases that by recognizing a union, the employer has agreed to bargain collectively with the union in good faith. An employer sometimes recognizes more than one union because he feels that recognition involves only a readiness on his part to discuss matters with the union and that nothing is to be lost by merely talking to more than one union. Talking, employers say, does not mean agreeing. In other words, the concept of the sole bargaining agent does not worry the employer who decides to accede to the insistent demands of a union or unions for recognition.

The Royal Commission on Labour examined the question of recognition at some length. The Commission traced the origin of the word "recognition" to the practice of the Government to permit combinations of Government employees to submit collective memorials and petitions (which they were prohibited from doing previously) and to conduct negotiations with the Government on behalf of their members on condition that they accepted certain rules. The term was gradually borrowed by private employers. The word "recognition", however, soon came to be used somewhat indiscriminately. Some argued that recognition implied the right of the union to speak on behalf of all the workmen of the establishment. On this ground, recognition was often refused under the plea that the union embraced only a minority of the employees.

The Royal Commission said that recognition "should mean that the employer recognizes the right of the union to negotiate with him in respect of matters affecting either the common or the individual interests of its members." By recognizing a union, the employer was not recognizing the claim of the union to speak for any persons who were not members of it. In other words, the Commission made it clear that they were not thinking of a representative union which was entitled to speak and bargain on behalf of all employees of an establishment.

On the question whether recognition should be made compulsory through law, the Royal Commission said as follows:

"Recognition in the letter must be followed by recognition in the spirit, by a readiness to discuss sympathetically points put forward by the union, by an accessibility to its officers and by willingness to let them have credit where credit is due. The Government manager or agent who, in remedying grievances to which a union has drawn attention, is at pains to make it evident that the union has had nothing to do with the result, or who keeps the union officials at arm's length by insisting on written communications in every case, is stultifying the action of Government in according recognition. The employer who discriminates in the matter of promotion against union men, or in any other way tries to weaken the influence of the union he has recognized, is in no way better than the employer who denies recognition outright, and is as little likely to advance the cause of peace. These considerations, apart from any other, make it impossible for us to endorse the proposal, advanced by several other labour sympathizers, that recognition should be obligatory in certain cases. It was suggested, for example, that an employer should be compelled to recognize a registered union of his men. Recognition may mean much, but it may mean nothing. No law can secure that genuine and full recognition which we desire to see."

The Royal Commission on Labour said that the fact that a union consisted of only a minority of employees was no adequate reason for withholding recognition and that "the existence of two or more rival unions is not in itself a sufficient ground for refusing to recognize any or all of them."

The Bombay Industrial Relations Act contains, as we have seen, provisions for the registration of various types of unions including the representative union with the right to bargain exclusively on behalf of all employees of the industry in an area. There is no such provision in the Industrial Disputes Act, 1947. An amendment to the Indian Trade Unions Act, 1926 was made in 1947 providing for two principal matters, viz., the recognition of trade unions and the prohibition of unfair practices. That Act provided for the grant of recognition compulsorily by order of a labour court. One of the requirements for the grant of recognition was that the union should be representative of all workmen employed by the employer in that industry and that in deciding whether this condition was fulfilled, the labour court was required to have regard to, but not to be bound by, the fact whether the proportion which the number of workmen who were members of the trade union and were not in arrears of subscription for any period exceeding three months bore to the total number of such workmen was less, or not less, than a prescribed percentage—roughly 15 per cent. The rights of a recognized union were mentioned in the Act. The executive of a recognized union was entitled to negotiate with employers in respect of matters connected with the employment or non-employment or the terms of employment or the conditions of labour of all or any of its members. The employer was required to receive and send replies to letters sent by the executive and to grant inter-

views to that body regarding such matters. The executive of a recognized union was entitled to display notices of the trade union in any premises where its members were employed. The Act was never brought into force because of its repercussions on unions of civil servants; nor was it amended to exclude from its scope civil servants though there was a proposal to that effect at one time. The main drawbacks of this Act were that it did not restrict recognition to the biggest of the various rival unions and that it did not give the recognized union representative status so as to enable it to bargain exclusively on behalf of all workers. It also did not make effective arrangements for ascertaining the membership of rival unions.

The Labour Relations Bill, 1950 which was introduced, and debated upon, in the Legislature provided for the certification of three types of bargaining agents, viz., (*i*) a general bargaining agent, (*ii*) a special bargaining agent, and (*iii*) a local bargaining agent. The first was a bargaining agent for a whole industry in a local area; the second, a bargaining agent for a particular craft; and the third, a bargaining agent in an individual establishment. The Bill provided for the certification of only one agent in a particular category. It did not provide for the holding of a ballot, for it said that the labour court should, for the purpose of certifying a bargaining agent, take such evidence and make such enquiries and examine such records as it deemed necessary. A bargaining agent, subject to settlement of jurisdiction *inter se*, had exclusive right to bargain collectively on behalf of all employees in the establishment or industry concerned and "to bind them by a collective agreement." It is unfortunate that the Labour Relations Bill was not enacted, for its provisions might have served to strengthen collective bargaining.

Since then the question of recognition or certification of a representative union has been examined by the Government from time to time. The attitude towards this question has largely been influenced by the possibility of a secret ballot intruding into the procedure for certification. Official reaction has been strongly against the holding of a ballot for the election of the bargaining agent. This opposition is based on the apprehension that trade union leaders might sway an ignorant electorate by exaggerated demands and impossible promises and so win a victory in the ballot. Another difficulty pointed out in the way of the ballot is that in several establishments only a small fraction of the employees are members of unions and that it will be unreasonable to allow non-members to take part in the ballot. At the same time, if non-members are all excluded, it would be difficult to claim that the bargaining agent represents the entire establishment. The Congress-dominated Indian National Trade Union Congress has agreed with these views, while the communist-dominated All India Trade Union Congress has consistently pressed for decision by a ballot. The communists say that if in the general elections of the country dishonest and impossible claims can be made by any party with a view to swaying the electorate, there is no reason why such a procedure should not be allowed in trade union elections.

If the Prime Minister of India can be chosen through exaggerations and false promises, there is no reason why the bargaining agent should not be selected similarly. Their answer is that the electorate is not so gullible as is made out and that it will not be won over through false promises and exaggerated claims. In the absence of a provision for secret ballot, the All India Trade Union Congress is against any statutory provision for the selection of the bargaining agent as it fears that the results might be manipulated.

In the absence of agreement regarding the ballot and statutory provision, the parties have made a virtue of necessity and written into the Code of Discipline a procedure for the recognition of unions. Under that Code, which is a purely voluntary one, managements have agreed to recognize unions in accordance with the criteria evolved at the 16th Session of the Indian Labour Conference, 1958. In accordance with those criteria, a union applying for recognition should have a membership of at least 15 per cent of the workers in the establishment. A union can claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area. Where there are several unions in an industry or establishment, only the one with the largest membership will be recognized. The representative union for an industry in an area should have the right to represent the workers in all establishments in the industry, but if a union of workers in a particular establishment has a membership of 50 per cent or more of the workers of that establishment, it should have the right to deal with matters of purely local interest pertaining to that establishment. How far these voluntary arrangements will prove a success remains to be seen. Already the All India Trade Union Congress has complained at a number of tri-partite meetings that the rules for recognition have proved a dead letter so far as its own unions are concerned. Even if the recognition rules are worked honestly, difficulties are bound to arise as to the binding nature of an agreement entered into by a representative union on workers who are not members of the union. In the absence of a statutory provision, it might be difficult to bind them.

Though there are frequent complaints that unions which deserve to be recognized are not recognized, there is, at present, little or no remedy other than a strike. The question whether a claim to recognition can be adjudicated upon as an industrial dispute was examined at some length by the All India Industrial Tribunal (Bank Disputes) and the Labour Appellate Tribunal hearing the appeal from the award of the former. The question of the recognition of the All India Bank Employees' Association and of its constituent unions had been referred to the Tribunal for decision. The original Tribunal took the view that the dispute about the recognition of a union was an industrial dispute and that the banks concerned should recognize the All India Bank Employees' Association subject to certain conditions. The Appellate Tribunal held that employees were entitled to claim the right to be represented

in or about their dealings with their management and that from that point of view the refusal of the management to recognize a union might well constitute an industrial dispute. The Appellate Tribunal, however, added that "we are satisfied that such industrial dispute cannot be resolved by a direction under the Industrial Disputes Act." The Appellate Tribunal analysed the provisions of the Indian Trade Unions (Amendment) Act, 1947 providing for the recognition of trade unions and said "that the legislature realized that the question of recognition of unions was not a subject which could appropriately be dealt with under the Industrial Disputes Act and accordingly proceeded to enact the amendments to the Indian Trade Unions Act." The mere fact that that Act had not been brought into force was no argument for deciding that recognition could be properly dealt with under the Industrial Disputes Act. The Appellate Tribunal observed that "we are of the view that assuming we have jurisdiction under the Industrial Disputes Act to decide this question of recognition of unions, we should hold that it is unwise to order such recognition." In the end, the Appellate Tribunal held that the question of recognition should not be dealt with in adjudication under the Industrial Disputes Act and that if Government felt that it was necessary to provide a machinery for deciding the question of recognition, it was for them to set up the machinery contemplated in the Amendment Act of 1947 after bringing it into force.

Disputes regarding recognition are quite frequent and are very important in that they affect the very standing and utility of the trade unions concerned. If an employer refuses to recognize an important union, he is creating a continual state of tension between himself and his employees in his establishment. It would, therefore, seem necessary to have a clear-cut legislation on the subject of certification of representative and recognized unions. Even countries which believe only in the minimum of State intervention in industrial disputes have elaborate legislative provisions regarding the certification of bargaining agents. There is no reason to believe that we can solve this problem in this country on the basis of purely voluntary and ineffective measures. We shall revert to this matter in the chapter entitled 'Summary and Recommendations'.

Rationalization: Another bone of contention between employers and workers, which leads to the rapid deterioration of relations between them, is the question of rationalization. In the days immediately after the Second World War, when employers started replacing their old and worn-out machinery by new and improved machinery, workers looked upon that process as an attempt to increase their workload and to reduce the working force. No dispute is as keen and bitter as the one relating to the deprivation of a worker of his means of livelihood. It is only in the light of safeguards evolved subsequently that the objection to rationalization has been partially overcome.

The word 'rationalization' does not refer to any one process. Rationaliza-

tion techniques can be applied to men, materials and methods. The International Economic Conference of 1927 defined the objectives of rationalization as follows:

(1) to secure the maximum efficiency of labour with the minimum effort;
(2) to facilitate by a reduction in the variety of patterns, design, manufacture, use and replacement of standardized parts;
(3) to avoid waste of raw materials and power;
(4) to simplify the distribution of goods; and
(5) to avoid in distribution unnecessary transport, burdensome financial charges and the useless interposition of middlemen.

The Advisory Committee on Management of the International Labour Organization defined rationalization as "any reform tending to replace habitual antiquated practices by means of methods based on systematic reasoning." In short, rationalization means any process based on knowledge and reason which would increase the efficiency of production, avoid waste, improve quality and generally produce the best results for the least effort and expenditure.

Even in an industrially advanced country like the United Kingdom, the need constantly to look for measures of rationalization and of higher productivity has been keenly felt. The success of the American industrial system in providing what is perhaps the highest standard of living to its workers has excited both curiosity and eagerness in other competing countries. In barely 50 years, American industry which was previously no better than European industry either in efficiency or in profitability has forged ahead with the result that the productivity of the American worker today is anything from two to five times and his earning from 1½ to 4 times that of the European worker. There is no use denying the fact that increase in productivity is the direct means of raising the standard of living of workers.

In India, the problem of rationalization which is so necessary for higher productivity is both acute and difficult. Employers have constantly complained that the productivity of the Indian worker is far below the productivity of his European counterpart—not to speak of the productivity of the American worker—and that far from productivity increasing since the last war, it has actually declined. Workers have naturally not accepted this charge and have attributed the low productivity of the Indian worker to the intolerable working conditions obtaining in industry in this country. There are few reliable productivity indices in the country which would permit of a comparison of productivity over a period of time or of a comparison with productivity in other countries. Nevertheless it is true that in several fields of production the output per man-shift or man-hour is distinctly low. In 1950, the Fiscal Commission analysed the statistics of output per man-shift in the iron and steel and coal industries and gave its opinion that in recent

years there had been a fall in labour efficiency. One contributing factor towards low efficiency in India after the last war was the large surplus of labour in a number of industries, particularly the coal industry. During the war the working force was greatly enlarged irrespective of productivity or cost merely with a view to securing some additional production which was vital to the war effort. In industries in which articles were priced on the basis of cost with a profit margin, the employer did not have any incentive to economy. After the war employers found it very difficult to retrench any part of their labour force and they have since had to rely on natural wastages and better utilization with increasing production for neutralizing their surpluses. The average daily employment in coal mines in 1947, when the total production was under 30 million tons, was 3,21,537 (in Part A States alone) and in 1960-61 when the total production had gone up to 53 million tons, the average daily employment was still well under 4 lakhs. Though a part of the additional production was obtained through extensive mechanization, it is obvious that there was much surplus labour in the industry which could be utilized for producing the additional production.

Replacement of machinery on an extensive scale was needed after the war. The machinery which was already old in many cases had been overworked without adequate repairs or replacements during the war and was in a bad way at the end of it. With the coming up of new and up-to-date mills and factories, not only in Europe but in several Asian countries, it was imperative that Indian industry should modernize if it was to meet, even partially, the great competition that was soon coming. A survey of the state of machinery in the cotton textile industry was made after the war, while the Indian Jute Mills Association made a similar estimate of new machinery required for the jute industry. Modern machinery was necessarily far more efficient than the old machinery which was being scrapped. Moreover there was an increasing tendency towards automation in all the new machinery supplied by manufacturers. Naturally a much smaller labour force was adequate for the same volume of production with the new machinery. The automatic loom, in particular, was a great labour-saving device for one of our most important industries, and its installation, desired by employers, particularly with an eye to stepping up exports, involved considerable reduction in the labour force. The question of retrenchment of a part of the existing labour force thus loomed large.

The opposition to rationalization and installation of new machinery on account of the retrenchment involved became pronounced at the very beginning of the First Five Year Plan. While the adverse effects on the employment situation caused by new machinery were fully realized, it was felt that the country could avoid modernizing its machinery only at the risk of becoming hopelessly inefficient in a highly competitive world market. The Labour Ministry and the Planning Commission, therefore, had to use their good offices to bring about an agreement between employers' and workers'

organizations on the question of rationalization. Rationalization was to be allowed subject to certain safeguards for workers. Musters were to be standardized and workloads fixed on the basis of technical investigations carried out by experts nominated jointly by management and labour. Fresh recruitment was to be stopped and vacancies due to death and retirement left unfilled. There was to be no retrenchment of existing workers as far as possible. Surplus workers were to be offered work in other departments "wherever possible." Gratuities were to be offered as inducement to workers who retired voluntarily. Retrenchment, when inescapable, was to be effected from among the recently employed workers. Incentives by sharing the gains of rationalization through higher wages and a better standard of living were to be provided. Workers thrown out of employment as a result of rationalization were to be offered facilities for retraining.

Notwithstanding Government's good offices, the attitude of the parties to rationalization has been one of suspicion and apprehension. Commitments at the negotiating table have broken down in the field; the viewpoints of the parties have wavered. One of the early agreements entered into in respect of rationalization was the one between I.N.T.U.C. and H.M.S. on the one hand and the textile employers and the Kanpur Textile Mills Rationalization Enquiry Committee on the other in 1951. The agreement included the following terms: (*i*) There should be standardization of musters for fixing a standard workload under standard conditions. In the absence of ready agreement, this work should be entrusted to experts by mutual consent. The number of workers engaged in particular occupation could be reduced as a result of standardization of musters. (*ii*) Retrenchment may be necessary when the mode of work is changed or old machinery is replaced by new. The necessity for retrenchment is accepted. (*iii*) To soften the hardships of retrenchment several steps should be taken, such as stoppage of fresh recruitment, non-filling of vacancies arising from death, retirement or withdrawal, offer of alternative jobs in other departments, voluntary retirement through the offer of gratuity, retrenchment of the last-comers first, and working on all the seven days if possible. (*iv*) Incentives for sharing the gains of rationalization through higher wages should be provided.

This agreement clearly accepted the necessity of retrenchment in certain circumstances. Subsequent agreements were less specific on the necessity for, and the inevitability of, retrenchment. For instance the Indian National Textile Workers' Federation passed a resolution in Bombay in April 1953 in which it said that the added remuneration in the event of rationalization should not be less than half the gain accruing to the employer and that there should be no unemployment.

Under a spate of criticism, particularly from communist-inspired unions, the I.N.T.U.C. began to tighten up its attitude to the controversial question of rationalization. First it stipulated at a General Council meeting at Rajkot in May 1954 that along with rationalization of machinery, the efficiency of

management should be improved. Later on, in the same year, the I.N.T.U.C. formulated its views comprehensively at a meeting of its Working Committee in New Delhi. The resolution on rationalization said that "rationalization which helped the consumer and the country was inevitable and could not be resisted." It said at the same time that rationalization should be limited to replacement of obsolete machinery and that it should be subject to the following conditions, namely, (*i*) that rationalization should not create unemployment, (*ii*) that the additional workload should be within the limits of the workers' capacity, (*iii*) that working conditions should be maintained at an agreed standard, (*iv*) that workers should be given a proper share in the gains of rationalization, (*v*) that a joint machinery to supervise the functioning of rationalization should be instituted, and (*vi*) that workers should be given all facilities to check the working of the processes and assessment of workloads.

While this stand of the I.N.T.U.C. marked a great advance on the attitude of absolute opposition voiced by workers to all measures of rationalization, it was limited in its scope to the replacement of worn-out machinery. There was no acceptance of other forms of rationalization, particularly automation.

In its paper to the Planning Commission submitted in the middle of 1955 the I.N.T.U.C. went a step further and said that "we do recognize that under certain circumstances certain labour-saving machinery will have to be accepted, especially when we have to adjust our resources to our needs. We are inclined to accept this limited rationalization only to see that national asset once created by whatever process in the past should not be wasted and new problems of unemployment or closure of industries, already existing, should not occur." But among the conditions imposed, the I.N.T.U.C. mentioned that "most of the benefits accruing from the introduction of rationalization should go to the worker so long as he has not attained a living wage, and thereafter there should be equitable distribution between the worker and the industry."

In seeking protection for existing workers the I.N.T.U.C. stipulated that even temporary and substitute workers should not be retrenched in any scheme of rationalization.

The Hind Mazdoor Sabha has taken a stand somewhat similar to that of the I.N.T.U.C.

The A.I.T.U.C.'s conditions for permitting rationalization are somewhat different. The profits of rationalization should largely go to the worker or to the community in the form of better equipment or better working of the factory.

The implementation of the safeguards worked out by the Labour Ministry and the Planning Commission was thus neither smooth nor satisfactory. Complaints continued to be received from workers' organizations that employers were resorting to rationalization and retrenchment of workers without regard to the safeguards. As a result of further consultation, the approach to

rationalization was clarified in the Second Five Year Plan as follows: "The First Five Year Plan mentioned a number of principles evolved as a result of agreement between the representatives of employers and workers for facilitating the progress of rationalization. In all cases of rationalization, these principles should be strictly adhered to and should be applied in the spirit in which they were arrived at. It is necessary to emphasize this point since it has been found that in the discussions on rationalization both employers and workers sometimes overlook the principles mentioned above. In the context of growing unemployment, rationalization has an adverse psychological effect on workers. Even so, to freeze the existing techniques of production is not in the larger interests of a developing economy. Rationalization should, therefore, be attempted when it does not lead to unemployment, it is introduced in consultation with workers, and is effected after improving working conditions and guaranteeing a substantial share of gains to workers."

The beginnings of a conscious effort at increasing productivity under State auspices were made in 1953 when an International Labour Organization Productivity Team arrived in India to examine the textiles and engineering industries. The Team showed how substantial increases in productivity of the order of 15-50 per cent could be made with the same labour and machines if only greater attention were paid to improved methods and improved maintenance and utilization of machinery. The Team was satisfied that work-study techniques could be applied in India with marked success in raising output, that substantial increases in productivity could be achieved without any fresh capital investment, that improvement of working conditions was a highly important factor in raising productivity, and that work-study techniques could benefit workers by improving working conditions, reducing physical effort, and raising the level of wages.

One important result of the studies undertaken by the Team was the realization by experts well-versed in Western techniques that the problem of higher productivity in under-developed countries was quite different from that in Western countries. The Team summarized its views as follows:

"In India manpower is plentiful and capital is scarce; the application of techniques to raise productivity must, therefore, be governed by the need to make the best use of the abundant human resources, and to avoid waste of capital in all its forms—not only equipment but human skills, not only foreign exchange but the whole physical fabric of industrial life. Emphasis must, therefore, be placed upon productivity improvements requiring little or no new investment and not involving retrenchment or increase in unemployment."

In spite of the realization by experts as well as employers that rationalization would not succeed if it led to retrenchment and in spite of a definite undertaking by employers that there will be no such retrenchment, the course

of rationalization has not been smooth in this country. Employers and workers continue to view the productivity movement from different angles. Their different viewpoints were stated clearly in two articles in the issue of the *Productivity Journal* of June-July 1960. The employers' theme put forward by Naval H. Tata was that labour was entitled to a share in the profits of the increased productivity only in certain circumstances but not others. If, for instance, the increased productivity was due to improved equipment and technique, without any increase in human effort, the worker would not be entitled to any share in the benefits of the increased output. On the other hand, if there was definite evidence of the contribution on the part of the worker towards increased productivity, whether with or without the aid of new equipment, he would be entitled to an appropriate share in the profits of the increased productivity. Naval Tata pointed out that the worker was not prepared to accept this position and that he was demanding a share in the increased productivity irrespective of the cause of the productivity. He pointed out that where the cooperation of labour was forthcoming, distinct results had been achieved by measures of rationalization which guaranteed continued employment and higher wages to workers. In a particular concern, productivity had gone up by over 40 per cent and the average basic earnings per worker by 75 per cent. In a textile mill where the trade union agreed to work four looms per weaver, instead of two, the increase in productivity per man-hour was 50 per cent with a corresponding increase in earnings. While agreement at the unit level had produced results, discussions and decisions at the national and industry levels had proved completely ineffective owing to inter-union rivalry. Naval Tata said: "Productivity and rationalization of labour are inextricably connected, and it is here that most of the productivity schemes have bogged down. This is partly due to the fact that in the early attempts at raising productivity, all emphasis was laid on rationalization of labour which, in most cases, meant immediate retrenchment. However, our country is now wedded to the principle of 'rationalization without tears', which has taken the sting out of rationalization. Unfortunately even after securing immunity from retrenchment, the trade unions have, in many cases, raised the bogey of fall in employment potential and insisted on maintaining the same number of jobs.... This will retard all schemes of productivity." Labour's point of view put forward by G. Ramanujam was that in India, with its vast unemployment problem, productivity schemes, "should not be designed in a manner that would reduce either the potential or existing volume of employment or result in the shrinkage of the purchasing power of the people." This meant that he was not prepared to accept a mere guarantee that there would be no retrenchment of existing workers. He would want an assurance that there would be no reduction in the actual or potential volume of employment. If every existing place has to be filled always in future, the gains of productivity would be greatly mortgaged by such an assurance.

According to him, "the first thing which is very important is full employment and any productivity scheme which would help us to take a step nearer to full employment should, therefore, be welcomed." At the same time, he would not accept the thesis put forward in certain quarters that increased productivity, even if it involved immediate reduction in employment, would, at some stage, be able to ease the problem of unemployment. While he argues that productivity schemes cannot even on a long-term basis solve the problem of unemployment, he wants only such productivity schemes as would ensure full employment.

Elsewhere in the Journal, the viewpoint of labour has been summarized as follows:

> "Productivity increases are not possible without the active cooperation of labour. This cooperation can only be given on the very distinct understanding that the gains of productivity accrue to labour, reasonable allowance being made for any costs involved in the installation or working of productivity techniques .... Paramountcy of the social interest enjoins that the gains in productivity should, in the first instance, be devoted to raising wages to a fair wage level. Labour would, therefore, be agreeable to full participation in the achievement of productivity increases provided a distinct understanding was arrived at that the gains in productivity would be devoted to raising their emoluments to a fair wage level."

From all this it would appear that in spite of assurances of safeguards and of protestations from both sides that higher productivity is necessary in the national interest, there is little meeting ground between the central organizations of employers and workers. There seems to be imperfect realization of the rights and responsibilities of the parties in working out schemes of productivity and rationalization. Each party clings to what it thinks is the right approach; there is seldom any attempt at fruitful compromise. Such an approach cannot but do great harm to rationalization and higher productivity. It may well be, as suggested by Naval Tata, that this unfortunate state of affairs is the result of trade union rivalry which forces the central organizations of labour to vie with one another in taking extreme standpoints and that a united labour movement might well see its way to assist actively in schemes of higher productivity. For the present, success in this field can arise only in particular places; it cannot accrue on a vast scale as a result of a large and concerted movement aimed at higher productivity. To these and other aspects, including the State's role in regard to rationalization and productivity, we propose to devote some more attention in the last chapter.

Collective Bargaining — Principles and Practice

We propose specially to give in this section a brief description of the

principles and practice of collective bargaining as this process has not yet gained much vogue in India and Indian readers might not be familiar with the subject.

"Collective Bargaining" is the term applied to the process by which trade unions and managements voluntarily meet, discuss, argue, rebut, negotiate and finally settle some or all of the terms on which employees agree to work for an employer for the duration of the agreement. It is "bargaining" because the process resembles, in essence, the practice that used to obtain in the market place before the old-time art of haggling gave place to the policy of the so-called fixed prices. In the field of industrial relations, haggling is still very respectable; in fact not to haggle, that is, to bargain, is a sign of immaturity indicative of stubbornness and reminiscent of the earlier type of unions which fixed prices and refused to negotiate a compromise. One of the reasons for the slow development of collective bargaining in the less industrialized countries of the world is said to be the inability and the unpreparedness of the parties, particularly the unions, to engage in purposeful haggling. The process is "collective" because the bargaining is done collectively on behalf of all employees represented by the bargaining agent. The term is not applied to the settlement of an individual contract, outside the scope of a collective agreement, between an employee and his employer where individual contracts are still the order of the day. The latter method obtains even in industrially-advanced countries in unorganized trades; it is, of course, prevalent over wide areas of the economy in the industrially backward countries where collective bargaining has not made much progress. Under an individual contract, the employee has to accept or reject the terms offered by the employer, and he has no means of testing the adequacy of those terms by concerted action with the rest of his fellow employees.

Though collective bargaining gained a fair amount of success in the United Kingdom by the middle of the 19th century and attained substantial strength and stability towards the end of that century, the term itself was popularized only in the last decade of the 19th century by Beatrice Webb through her thought-provoking and influential writing. Many of the major industries in the United Kingdom had well-developed systems of collective bargaining by the beginning of the present century. While practices develop rapidly, terminology takes time to get into vogue. It is only when a system has taken firm roots and has to be dealt with, and referred to, constantly that its votaries care to christen it appropriately. Collective bargaining, as an accepted method of establishing binding relationships between labour and management, did not get well-established in the United States until a much later period. The Industrial Commission set up by the United States Congress reported in 1902 that though collective bargaining described "quite accurately the practice by which employers and employees in conference, from time to time, agree upon the terms under which labour shall be performed," the term had not yet become current in common speech in the United States. The attitude of

American employers towards unionism was often unhelpful, and sometimes even hostile, right up to the enactment of the Wagner Act of 1935, and it is no wonder that the philosophy of collective bargaining took time to claim the serious attention of the American employer. The expression has since gained fashionable currency in all English-speaking countries — even in countries where the system itself is only a hope for the future.

To us in India, the course of development of collective bargaining in the United States should be far more interesting and instructive than its growth in the United Kingdom if our object is to escape the pitfalls, and to imbibe the lessons, inherent in the transplantation of a big idea from one environment to another. In the United Kingdom though collective bargaining was not established without much strife and struggle, such growth was, at any rate, native to her genius — a product of the suffering and thinking that gradually gave life and dignity to the new class of slaves of the machine age. On the other hand, it was not such a natural growth in the United States with her large immigrant population from all over Europe, having different ideas about the nature and utility of collective bargaining. The idea had first of all to be crystallized into a consistent technique of employer-employee relationship which would fit in with the type of political democracy that was being forged in the New World. The process was not easy; the resistance of employers was much stronger and more effective than in the United Kingdom. The fact that collective bargaining has by now been built up into a powerful and vigorous mechanism of industrial relations beyond any danger of destruction in the foreseeable future should not blind us to the vicissitudes through which the movement had to pass before it became a force to be reckoned with.

Beginnings of Bargaining: Right up to the end of the first quarter of the 19th century, there were no regular trade unions of the modern type in the United States. There were "societies" of workers which employers consistently treated as unlawful combinations, even as they had been so treated by employers in the United Kingdom. Those were days when the Combination Acts of 1799 and 1800 were effectively enforced in the United Kingdom and the common law doctrine of conspiracy was actively invoked against workers' organizations both in the United Kingdom and in the United States with consistent success. The public as well as the courts were prepared to sympathize with employers against what were dubbed as subversive elements. If the formation of a union, the main object of which was to secure a higher wage, was looked upon as a criminal act, there was no wonder that employers felt safe only if they kept themselves aloof from such dangerous combinations. Naturally there could be no negotiations with societies. Societies retaliated in their own way by presenting ultimata to employers whenever they had a demand to make. The members of a society met together, drew up a "price list" as the schedule of piece-rates was called, and took an oath that they would

not work for less or with somebody who worked for less. The ultimatum was then presented to the employer who ordinarily parried to gain time in order to see what his colleagues in the trade were doing. Sometimes a clever society pounced upon an unwary or timid employer and by isolating him from the rest, forced him to yield. If this happened, it was easy for the society to browbeat many other employers into agreement. Nevertheless, there were always a few stout hearts among employers who stood firm and refused to be coerced into submission by threats of isolation. In such cases, a strike inevitably followed with results often advantageous to the society. On the other hand, if all employers were firm in resisting the time rate from the beginning, societies had little remedy and had eventually to yield and perhaps retreat into oblivion. Whatever the final result, this was no case of negotiation or bargaining; it was one of unilateral imposition of certain desired terms. It was a case of a fight to the finish; there was to be no compromise or bargaining at any stage. In the midst of so much of stubbornness, and perhaps callousness, there was complete neglect of economic considerations.

With the gradual weakening of the common law doctrine of conspiracy and the increasing realization of the inevitability of trade unions which emerged out of the older craft societies, the futility of unilateral coercion on the one hand and of counter-resistance on the other began to dawn on both parties. Moreover, the practice of giving ultimata itself contained the seeds of negotiation and bargaining. Pitted against a powerful opponent, the party intending to give an ultimatum might often consider it prudent to retrieve something, if not the whole, of one's demands by resorting to persuasion rather than threats. Thus the new unions which were better organized and had come to stay as permanent organizations often found it more profitable to plead for friendly conferences than to brandish the bludgeon of strike repeatedly. Meanwhile employers, who had previously been isolated and set upon one after another, had learned the virtues of combination and begun to organize themselves into associations. A large and responsible association of employers could not merely say "no" to workers' demands and sit back in peace as there would then be nobody to pull them out of an impasse. The organization of increasingly powerful central, and eventually national, unions with substantial strike funds created a wholesome fear in the minds of employers that it might not be too easy in future to starve a labour force into surrender. Negotiations and compromises, as a means of averting unnecessary crises, had necessarily to be the new weapons of polite warfare.

A few progressive employers like Horace Greeley, Editor of the New York *Daily Tribune*, actively started canvassing for negotiated settlements. He expressed the view in 1853 that "without organization, concert and mutual support, among those who live by selling their labour, its price will get lower and lower as naturally as water runs downhill." He recommended that employers should appoint delegates to confer with the delegates of journeymen and that "by the joint action of these conferrers fair rates of wages in each

calling should be established and maintained." Greeley warned journeymen that "the aggregate of wasted time, misdirected energy, embittered feelings and social anarchy which a strike creates is seldom compensated by any permanent enhancement of wages thus obtained." This reminds us of the attempts made from time to time by labour economists to calculate the number of years in which the workers involved in a prolonged strike would be able to recoup the loss of wages sustained by them through the small increase in wages secured as a result of the strike. Complementary to the efforts of such employers were offers made by some unions of conciliation in preference to conflict. These were the early steps taken to substitute negotiations for conflict in the field of industrial relations in the United States.

Soon after the civil war, there were two developments in the economic field which further discouraged frequent resort to strikes. The first was the development of national unions and the limitations which they placed on the right of local unions to start strikes. Excessive and harmful emotional outbursts on the part of those in charge of local unions thus received a necessary curb from the more responsible national unions. The second was support to the principle of arbitration of disputes. The folly of unilateral action and coercion, regardless of economic justification or consequences, came to be realized by an ever-increasing number of interested persons. As a consequence, a number of joint boards of arbitration were established about 1870 in shoe firms in Massachusetts. This move received further support from the Knights of Labour, an organization established in 1878. The constitution of that organization said that "the substitution of arbitration for strikes, whenever and wherever employers and employees are willing to meet on equitable terms" was necessary. All this is reminiscent of the clamour for voluntary arbitration of industrial disputes which started in India some years ago. It seems to be an inevitable development in the march of ideas from the stage of unbridled coercion and violence at one end to mature collective bargaining at the other.

Thus it was that the greater tolerance shown to trade unionism, the legalization of trade unions, the organization of employers into suitable negotiating associations, the instilling of responsibility into local unions by national unions, the advocacy of negotiations in preference to strikes by people like Greeley, the increasing recognition of the importance of arbitration in the settlement of labour-management disputes and generally the development of a more enlightened behaviour on the part of the contestants laid the foundations of collective bargaining in the United States.

Employer Resistance to Bargaining: Though collective bargaining as a system got full recognition in the industrial relations field by the beginning of the present century, its future was still not wholly secure. Trade unionism itself came under a fresh form of attack from employers. Only a small portion of the working force had been unionized and not many employers were

willing to accord recognition to unions. The first quarter of the present century presented a new threat to trade unionism and genuine collective bargaining was in jeopardy. The scientific management movement had gained much momentum, and terms like job standardization, time and motion studies, job evaluation and incentive systems of payment had attracted many adherents. It was argued that greater efficiency and production were possible through incentive systems of payment which would also guarantee greater earnings for workers. There would then be no need for conflicts between labour and management. Simultaneously, threat to collective bargaining came from another direction too in the form of the employee representation movement. This was an ingenious method discovered by employers and exalted to the position of a "constitutional" system. Employees in an individual company, plant, shop, or department selected representatives to a "legislature" to which management too sent its representatives. Workers' representatives were entitled to raise and discuss questions pertaining to wages and working conditions but the final decision remained with the management. Employee representation was played up as vastly superior to collective bargaining. It was an ingenious discovery, so it was claimed, whereby labour could achieve its aspirations without suffering the pains of achievement. Actually that was not so. Its greatest drawback was that there was no question of joint negotiation and settlement; the prerogative of final decision rested with the management. Employees had no freedom of association; nobody other than an employee of the unit could sit on the "legislature". Moreover, negotiation was confined to a single unit. This barred negotiations on a larger scale.

Inevitably unions considered employee representation plans as serious threats to the collective bargaining movement. The clash between these two ideologies was directly responsible for the failure of the National Industrial Conference called by President Wilson after the First World War to work out a tri-partite code of industrial relations. The representatives of employers desired that the right of the employer to deal, or not to deal, with men or groups of men who were not his employees should be recognized. This demand which would have perpetuated employee representation plans was naturally rejected by union representatives who in turn suggested that "the right of wage-earners to organize without discrimination, to bargain collectively, to be represented by representatives of their own choosing in negotiations and adjustments with employers in respect of wages, hours of labour and relations and conditions of employment" be recognized. The employers' representatives would not accept the latter suggestion for fear of recognizing outside unions. The failure of this conference provoked the United States Commissioner of Labour Statistics to declare in 1920 that "the huge majority of employers in this country are, and always have been, opposed to labour organizations."

Employee representation plans remained a threat to unions and to collective bargaining throughout the twenties. Suitable legislation for the protection of

collective bargaining followed eventually. The Railway Act, 1926 was the first in the protective legislative series. It recognized the right of rail-road workers to negotiate through representatives of their own free choice and placed a duty on the management to recognize and negotiate exclusively with the employees' representatives on pay, rules and working conditions. The National Industrial Recovery Act, 1933 guaranteed the right of employees to organize and select such representatives as they chose for the purpose of bargaining collectively, but this legislation did not contain any specific provision for the recognition of unions by employers. Moreover, it was invalidated by the Supreme Court. The first real legislative safeguard which established the right to collective bargaining on a comprehensive scale was the National Labour Relations Act, 1935, the constitutionality of which was confirmed by the Supreme Court in 1937. This Act clearly enunciated the right of employees to form into unions and to engage in concerted activities, including strike action, without any intervention by the employer. It also laid obligations on the employer to recognize unions and to bargain with them.

Bargaining Strengthened: Since 1935 collective bargaining has developed into a mighty instrument for the preservation of industrial peace in the United States. Students of the Indian scene will recognize many of the early trends in America repeating themselves in the Indian labour-management relationship today. More of this later on; here it might be useful to analyze various aspects of collective bargaining as they have developed in industrialized countries in recent times.

Collective bargaining, as now fully developed, consists of three distinct but interrelated steps, namely, (*i*) the creation of an agreement, (*ii*) the interpretation and application of the agreement, and (*iii*) the enforcement of the agreement. Methodical thinkers like to characterize these as the legislative, the judicial and the executive parts of a system of industrial democratic government. While the creation of the agreement is a difficult and important matter, its administration to the satisfaction of the parties is even more important. An agreement is hammered out in a few days or weeks, but it is lived with over many months or even years. An amicable relationship between the parties throughout the long period of interpretational differences is the test of the cultivation of an effective system of collective bargaining. The grievance procedure that is evolved to take care of such differences is open to abuse both by labour and management. Labour has a capacity for coining demands and differences that is truly astounding; the mint works overtime when relations deteriorate. A deliberate policy of pressurizing the management can lead to a complete clogging of the machinery of grievances. Alexander R. Heron refers in his book *Beyond Collective Bargaining* to the large number of issues that came before the American War Labor Board "which were emotional, inconsequential, and impractical of solution." He adds that hundreds or possibly thousands of these minor and borderline

issues impeded the work of that Board. In peace times all such issues would be pressed either into the collective agreement itself or in grievance proceedings. The employer can, in turn, subject the system to abuse. A properly-run grievance procedure generally leads to the settlement of practically all but a handful of cases at levels sufficiently low down in management. Only a few defy all attempts at settlement and have to be taken to arbitration, the last step in the process. But when relations deteriorate, managements have been known to take the punitive attitude of settling nothing and of forcing up everything into arbitration. The union is thus pushed into exhaustion through seeking legal remedies.

The only practical way of enforcing agreements is by voluntary acceptance of the sanctity of contract and through self-discipline. Collective agreements may be legally enforceable, but a legal remedy is generally sought only after mutual relations have broken down beyond the possibility of immediate repair. Ordinarily parties must necessarily cooperate in the day to day functioning of an establishment in spite of differences, and except in extreme cases court action is seldom thought of as an adequate substitute for mutual settlement.

Method of Negotiation: A collective bargaining agreement is generally arrived at by mutual discussion between the parties at one or more conferences. In some countries, particularly the United States, informality is the key-note of the discussions. There is no fixed number of representatives on either side; each side may bring in as many or as few as it likes. When negotiations are conducted by a local union, it is usual for a representative of the national union to sit in, for it is the responsibility of the national union to coordinate the efforts of its various local unions and to endeavour to apply a common yardstick in the settlement of essential terms and conditions of service. The committee which negotiates an agreement on behalf of the employees is usually elected by the members of the local union from among those affected by the bargaining. The president of the local union is invariably included in the committee and acts as the main spokesman. Where a representative of the national union joins in negotiations conducted by a local union in matters falling within the jurisdiction of the latter, he merely keeps a watching brief and invariably falls in line with local views. The employer's side is represented by at least one top management official such as a vice-president and one or more other senior officials of the firm including the personnel manager. The employer's side may often consist of a group of employers, or of an association of employers, or again of a number of associations. In such cases the employer's side is represented by a committee representative of the various constituents.

As it is the union which generally puts forward demands, the initiative for starting discussions often rests with it. It may ask for a bargaining conference some time before a contract is due to expire. The demands put

forward by a union would ordinarily have been approved of earlier by the membership of the union. In the case of bargaining by local unions, the procedure for the formulation of demands is simple. Many unions maintain suggestion boxes and all suggestions received are considered by a committee set up for the purpose. The proposals, as finally settled by the committee, are invariably submitted to the members for ratification before negotiations with the employer start. Where bargaining is carried on by a national union, the demands are drawn up and approved of at the annual convention or at a conference specially called for the purpose. Local unions send in formal resolutions which are considered by one or more committees of the convention or conference. With the growth of powerful national unions, the initiative for the formulation of the more important demands has passed into their hands. Sometimes, the national union may not insist on bargaining at its jurisdictional level with the corresponding employer organization, but in that case it will set up minimum standards for negotiation by local unions or prescribe standard clauses for being written into all agreements negotiated by local unions. Whatever be the procedure adopted by a national union, it tries to exercise close control over local unions in all but purely local problems. In most cases, the representatives of both the national and local unions appear jointly, the leadership in discussions being taken up by the representative of the union which is charged with the responsibility for the negotiation at hand.

The union's demands may be presented at the opening session of the conference with or without an explanatory oral statement. It is unlikely that the employer's representatives would choose to make any comments immediately. They may ask for clarification of doubtful points or of demands deliberately camouflaged by the union. They would then go back for consideration and deliberation among themselves. At subsequent meetings, counter proposals, revised proposals, arguments, disputations, threats, accommodation and all that go with the term "bargaining" would follow.

Nowadays both employers and unions in industrially-advanced countries (but seldom in India) maintain adequate research departments to produce every kind of statistics which would lend support to particular viewpoints. While masses of economic data are produced during collective bargaining, little real use is made of them in arriving at the final agreement. Statistics may be quoted to rebut a position taken by the other party, but seldom to hammer out an agreement. In its efforts to squeeze the maximum possible, the union is not limited by considerations of what is fair in the context of certain statistics. Consequently the employer too does not think it worth while to start negotiations with an offer which might be justified by statistics. It is the consequences of the failure to agree, rather than the justice of one's stand, that eventually decide how bargaining should proceed. Statistics are, however, important to fix facts. If the facts of a situation are themselves in dispute, that will be an additional hurdle in the path of settlement. Statistics

alone, therefore, cannot bring about agreements, for bargaining involves compromise which is not necessarily the product of statistics or of precise economic reasoning. Nevertheless, statistics play a large role in collective bargaining by revealing the magnitude, if not the absurdity, of announced positions and reduce the area of disagreement. In any case, they will provide a justification or, at any rate, a pretext for a party to come off an untenable position.

When agreement is finally reached and reduced into writing, both parties have to submit it for ratification by those in authority. The union representatives have to submit the agreement for ratification by members. In some cases agreements entered into by a local union have to be ratified also by the national union. This is to enable the national union to ensure that common standards are maintained in certain matters in all areas. If an agreement has been bought at a great sacrifice, it may be thrown out by the members, in which case a new negotiating committee is elected and starts discussions afresh. One great advantage of the approval of agreements by union members is that it ensures successful implementation of the agreement without any obstruction from within.

Ratification by the employer is a somewhat simpler process. Where the president of the establishment is on the management committee, he will ordinarily have full powers to commit the company. In some cases, negotiators secure the concurrence of the appropriate authorities before entering into a commitment with the union. In such cases, ratification is a mere formality. When several plants or companies are involved in a bargaining, ratification becomes more complicated. Where negotiations are carried on by an employer's association, the resulting agreement may be binding only if the members of the association sign it individually. Some associations carry with them the authority to commit their members without seeking ratification.

In the United States, there is the minimum of formality about the technique of bargaining. In the smaller companies, the representatives of the two sides face each other and discuss matters without ceremony. Where the bargaining groups are large, a chairman may be appointed from among themselves by mutual agreement in order to provide for orderly discussion. No outsider is generally brought in to preside as chairman though this practice is not altogether absent. If a conciliator is called in, he acts as both conciliator and chairman but conciliators are generally appointed only when negotiations have reached an impasse. The conference may have a secretary and sometimes arrangements may be made for the keeping of a verbatim record of the proceedings. Informal discussions without the maintenance of any record seem to produce the best results. The presence of outsiders makes the parties wary of what they say. Speakers are apt to feel subconsciously that the outsider might keep, and use at some stage, evidence of what they say. The outsider's presence makes them say what they would not otherwise have said. The maintenance of a written or taped record has even a worse effect on the speakers. The evidence will now be documentary rather than oral. Speakers

must then speak to the gallery rather than to the party across the table. They must produce effects even if no agreement results from them. It is, therefore, always advisable to carry on negotiations in a free and friendly atmosphere without any outsiders and without the weight of oppression of a written record.

When the discussions threaten to end in a deadlock, there may be provision for the appointment of a mediator who generally hears the parties in privacy and carries suggestions from one party to the other. If mediation also fails, the parties may sometimes agree to arbitration though generally there is an all-round aversion to arbitration on basic issues. Employers feel that arbitration on fundamental issues would mean the handing over of the control of the company to an outside party which may not be the best custodian of the fortunes of the company. Their experience shows that arbitrators function generally on the principle of splitting the difference and that the rights and wrongs of a case seldom govern their decisions. Unions have felt that arbitrators generally side with employers and that, in any case, the process of arbitration involves unbearable delay.

The procedure for negotiations is somewhat different in the United Kingdom and in other countries following the British pattern. In the early days of trade unionism, collective bargaining in the United Kingdom was invariably confined to individual establishments. The trade union operating in an establishment bargained with the employer of that establishment. With the enlargement of the size of organization of trade unions, collective bargaining too crossed the boundaries of the unit, and regional and eventually national bargaining became common. This does not mean that the wage rates and conditions of work immediately became uniform throughout the country. While the approach to bargaining was common, the rates themselves varied from district to district. In all national agreements, district differentials are recognized. There is, however, pressure for the reduction of differentials and of the number of differing rates for the same job.

In the United Kingdom, procedural agreements are often entered into in regard to the technique of bargaining. Such an agreement may stipulate when and how often the parties should meet and what subjects they should discuss on a national or lower level. There may be provision in the agreement for the appointment of an independent outsider as the chairman of the bargaining conference. The composition of the negotiating body itself might be laid down in the agreement. The negotiating body might be an *ad hoc* joint conference or the joint industrial council set up under the Whitley Committee Report of 1917. Sometimes the machinery set up under the Wages Council Act, 1945 for the determination of minimum rates is used by the parties to settle standard wages instead of minimum wages.

Machinery for joint negotiation had been established in many industries long before the Whitley Committee recommended the setting up of joint industrial councils. Naturally there was little uniformity in the composition or working of these early negotiating bodies as they had been evolved in

an *ad hoc* manner to suit local conditions and circumstances. Quite powerful negotiating bodies have been built up in this way in engineering, ship building, iron and steel and cotton industries. Where joint negotiation has been more recently established and is carried on through joint industrial councils, there is greater uniformity in regard to the procedures and methods of collective bargaining.

The Whitley Committee recommended "the establishment for each industry of an organization, representative of employers and work-people, to have as its object the regular consideration of matters affecting the progress and well-being of the trade from the point of view of all those engaged in it, so far as this is consistent with the general interest of the community." The Committee expressed the hope "that representative men in each industry, with pride in their calling and care for its place as a contributor to the national well-being, will come together in the manner here suggested, and apply themselves to promoting industrial harmony and efficiency and removing the obstacles that have hitherto stood in the way." The joint industrial council recommended to be set up for each industry was to consist of representatives of the associations of employers and work-people "meeting at regular intervals for the consideration of such matters as the better utilization of the practical knowledge and experience of the work-people, the settlement of the general principles governing the conditions of employment, means of ensuring to the work-people the greatest possible security of earnings and employment, piece-work prices, technical education and training, industrial research, improvement of processes, etc., and proposed legislation affecting the industry." District councils and works committees were also recommended to be set up along with joint industrial councils. At the end of December 1952, there were 128 joint industrial councils.

In the early days of collective bargaining, both in the United Kingdom and in the United States, the relationship between the union and the employer was confined to the settlement of demands and the drawing up of a contract for a specific period. The relationship would be resumed when the time came for renewal of the contract. Under this arrangement, the parties met only when there were demands to be made and contracts to be negotiated and necessarily, therefore, in an atmosphere of tension and conflict. There was no systematic intercourse in the interval between two conflicts. The Whitley Committee emphasized that there were so many matters apart from demands and conflicts that would merit joint and cooperative consideration by the parties meeting from time to time in an atmosphere of goodwill and tolerance. If the joint industrial council could meet regularly, say once a quarter, to review the progress of the industry and to consider such matters as wages, earnings, technical education, improvement of processes, industrial research, etc., that would go a long way towards improving the industry to the undoubted benefit of both parties. The joint industrial council set up was thus a considerable improvement on the machinery for negotiation that had been set

up at an earlier period in several industries. After the Second World War, the arrangements in the latter industries were strengthened by the setting up of development councils which along with the bargaining machinery achieved substantially the same results as joint industrial councils.

The Character of Bargaining Units: The bargaining unit is the name given to the group of employees in the whole or part of an industry or industries, establishment or establishments, who are represented at a bargaining and are covered by the same collective agreement. The settlement of the bargaining unit is often a matter of considerable complexity. In countries where there is no law governing collective bargaining, the general practice is for the union and the appropriate management to work out the unit in agreement. In countries such as the United States or Canada where legal provisions control the choice of the bargaining unit, the authorities mentioned in the law, such as the National Labour Relations Board, have a voice in the settlement of the unit.

Broadly speaking there are two types of bargaining units, viz., the craft unit and the comprehensive or general unit. Craft units are formed where trade union organization is on craft lines and the members of a craft wish to have their rates of wages and other special terms separately settled. The comprehensive unit includes all employees, regardless of their trade or functions, who work in a plant, company or industry. These two categories of units follow the general pattern of trade union organization. In practice, the large majority of bargaining units will be intermediate between craft and general units. In some craft units, all employees of a particular department such as the boiler house, the machine shop or the tool room are brought together. Though such departments contain a large number of skilled workers of one or more categories, they would include also unskilled employees. In other cases, the craft unit would include only the skilled employees of a particular category and not all employees in the department in which the skilled workers are working. In the case of comprehensive units, it is unlikely that all employees would be covered though all employees on production and maintenance are likely to be covered.

A typical bargaining unit in a factory might be defined as follows:

> "All hourly paid production and maintenance employees, exclusive of watch and ward staff, supervisors, temporary and probationary employees and salaried office employees, but including clerical employees working in production departments."

The agreement between the General Motors Corporation and the United Automobile, Aircraft and Agricultural Implement Workers of America (U.A.W.) reads: "The Corporation recognizes the International Union, United Automobile, Aircraft and Agricultural Implement Workers of America, affi-

liated with the A.F.L.-C.I.O. as the exclusive representative of the production and maintenance employees and mechanical employees in engineering department shops, except those listed in paragraph 3 below, for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment, or other conditions of employment in the bargaining units in which they have been so certified, etc."

While the manner of combination of employees decides the type of the bargaining unit, the manner of combination of employers decides the area over which the bargaining unit functions. In highly developed countries with a long history of collective bargaining there is infinite variety in regard to the area of bargaining. The pattern may move on from a single employer — single plant (or even department)—type to a multi-employer-national (or industry) type. A study of 3,000 bargaining contracts made by the U.S. Bureau of Labor Statistics in 1947 brought out the fact that in 80 per cent of the contracts only a single employer was involved, 68 per cent being confined to single plants and 12 per cent to multi-plants. Thus it was only in 20 per cent of the contracts that multi-employer units were involved. Among the latter, combinations of employers in a local area were found to be predominant, regional and national combinations being comparatively insignificant.

Even where a company has a number of plants, the bargaining may often be plant-wise and not company-wise. Sometimes a company may negotiate a master agreement for all its plants covering certain essential matters and leaving all other matters to be settled by plant-wise bargaining.

The single-employer, single-plant bargaining unit was the most common type in the early days of union development in the United States. Gradually as national unions became well established and industrial establishments grew up in size and complexity and extended their area of competitive functioning far beyond the local market, the size and nature of the bargaining unit also changed. When the area of competition became enlarged, it was necessary for employers to join together in association and to negotiate agreements over as wide an area as possible so as to reduce the inequalities of the wage burden caused by piece-meal bargaining. The development was, no doubt, partly tactical. Powerful national unions managed to isolate the weaker employers and to force them into submission and steadily extended their area of conquest to more powerful employers. If employers joined together, this would no longer be possible. Thus it was primarily the "unionization" of employers in the interests of safety and mutual protection that led to the expansion of the area of bargaining. First the employers in a city or local area got together. Then employers in a region thought it worth while to join together. There were combinations on a larger scale too.

Multi-employer bargaining on a fully industry-wide or national scale is still not very common in the United States. A near approach to it exists in certain industries like coal-mining, railroads, and men's clothing. Sometimes,

an agreement may cover several units in all States and for that reason may be called a national agreement, but it may not cover all units in the industry in all States. So it may not be a truly industry-wide agreement. Similarly agreements may include all units in an industry in specified States or regions but may not cover all States. Thus there may be national bargaining units which are not fully industry-wide and industry-wide bargaining units which are regional and not national, but not many which are truly both.

While the types and boundaries of bargaining units have generally been settled by practical considerations ascertained through experience, one general principle which settles the unit is that there should, if possible, be a single agreement applicable to the entire area within which there is competition in the ranks of employers and employees. Unless there is a common agreement, there will always be a tendency on the part of some groups of workers to accept lower wages in the interests of greater business and employment. The avoidance of cut-throat competition is what generally settles the bargaining unit. Acceptance by any group of workers of lower wages than those prevalent in the locality will immediately endanger the wages of workers in the region. In uncoordinated bargaining wages always tend to find the lowest and not the highest levels. It is because of this tendency for differing rates to get stabilized at the lower levels that employees have consistently refused to accept lower rates even when the alternative is closure of the establishment and consequent unemployment. The trend in India has unfortunately been otherwise. The Bombay Government has even enacted a legislation for legalizing lower wages in the case of units which have closed down and are being run to avoid complete unemployment. This may save a little employment for a time, but it will inevitably tend to depress wages throughout the industry.

The selection of the bargaining unit is based on the respective interests and bargaining power of the employer or employers and of the union concerned. However, the general trend noticed is towards the broadening of the area of bargaining. Craftwise bargaining may be accepted by the employer only when the craft represents a comparatively small part of the total labour cost in industries or employments, such as the building industry, in which the scope for competition from outside markets is limited. Barring such special cases craft bargaining is not common. Both in the United States and in the United Kingdom, bargaining has steadily developed from purely local bargaining to bargaining over areas covered by national unions. Here is a description by Prof. J. R. Hicks of the course of development of collective bargaining in the United Kingdom:

> "Three stages can be recognized, not found in every industry but forming a pattern which does indicate the general lines of development. The first stage is one of local negotiation, showing, as the 19th century wears on, an increasing tendency to become formalised. Then at the close of the

century, the formation of employers' associations on a national scale leads to the establishment of rudimentary forms of general negotiations used mainly as a court of appeal from the localities. Lastly, in the third stage, central bodies draw authority away from the localities and gradually bring the decision of important matters into their own hands."

In the United States, the National Labour Relations Board has exerted a considerable amount of influence in the determination of the bargaining unit. While the Board generally confirms a unit agreed to by the union and the employer or employers, it has to give its own decision in cases of disagreement. In giving its decisions, the Board is greatly influenced by past practices though for valid reasons it may depart from them. Until the passing of the Taft Hartley Act, the Board seemed to have been in favour of expanded units, but since then it has encouraged craft unions even by the break-up of comprehensive units.

Trend Towards Large Bargaining Units: There are several practical reasons for enlarging the area of bargaining. From the point of view of unions, piece-meal bargaining will inevitably lead to the creation of low-wage pockets which will, sooner or later, drag down higher wages prevalent in the area of employee competition. The advantages of having the same level of wages in the same labour market are many. Unions are consequently most reluctant to lower the wage level to suit the requirements of units threatened with closure. For employers too the equalization of labour costs enables the maintenance of the competitive capacity intact. The Industrial Commission of 1902 of the United States referred to this aspect of the enlargement of the bargaining unit when it observed: "The great advantage which is claimed for wide-reaching collective bargaining in trades where there is competition in the general market is the equalizing of the cost of production and of the conditions of labour in such a way that manufacturers in no one locality can secure an advantage over those elsewhere by cutting wages or otherwise granting less favourable conditions to their employees." The other practical reason is that employers in some cases and unions in others find it necessary to enter into large combinations to increase their bargaining power. This is the most practical demonstration in modern life of the adage that union is strength.

Several advantages have been claimed for the larger bargaining unit. From the point of view of labour, industry-wide bargaining will place in its hands the power to stop production throughout the industry—a power to paralyze vital sectors of the economy. Apart from this tactical advantage, there are several practical advantages too. For both sides a common master contract applicable to a large number of units saves them much labour and expense that would otherwise have been incurred in evolving a large number of individual agreements. By pooling resources, both sides are in a position to finance

research functions and whole-time arbitrators which may be beyond the capacity of individual units. In individual bargaining unions are always bothered by the necessity to keep up with the performance of the more capable unions. Industry-wide bargaining reduces such political pressures. Two other advantages are of special psychological appeal to unions. Differing wage structures in the area of vision of labour are a divisive factor within the union movement. They generate discontent in labour ranks and opposition to union leadership. The rank and file of unions cannot be bothered to enquire into the reasons for the differences. Union leaders cannot sleep in peace until they have levelled up the differences. The second psychological advantage is the egalitarian appeal which uniform terms hold out to the membership. It also protects the weaker sections of union organization from exploitation.

The expansion of the bargaining unit is not without its disadvantages or opponents. It is claimed that industry-wide bargaining may lead to monopolistic conditions which are harmful to public welfare. The process of levelling-up of wages may lead to the elimination of marginal units and to the concentration of business in the hands of powerful employers. This is the way to monopolies. Moreover new entrants into the industry will have an uphill task, being unable to live up to the standards evolved by long-established leaders. If, in addition, employers and unions act in collusion in inflating labour costs, the consumer will be the chief victim. An employer group which retains in its hands the strength arising from monopolistic conditions can be a real menace even to the authority of the State. Economic considerations will then be over-shadowed by political considerations.

On the other hand supporters of large-scale bargaining say that social security measures which result from bargaining are not possible unless the coverage is large. Another advantage claimed is that it is only by concerted industry-wide action that any substantial increase in productivity can be encouraged and achieved.

It is against this background of a continuing international trend towards larger bargaining units that we must view current trends in India. Such collective bargaining as exists in India is largely limited to single-plant bargaining. It is only to a very limited extent, as for instance in the textile industry in Bombay or Ahmedabad, that there is some form of local multi-employer bargaining. But this does not mean that there is no attempt at standardization of conditions throughout an industry. The Government of India has increasingly been intervening in the settlement of wages and other conditions of working in important sectors of industry either by referring existing industrial disputes to compulsory adjudication or by setting up wage boards for whole industries on a voluntary basis. Wages for entire industries have thus come to be fixed in textile, cement, sugar, jute, plantations, coal mining, iron and steel, banking, working journalism, and other industries and occupations. The old-established industries like textiles, jute, sugar,

etc., are not all modern. In the textile industry with some 400-500 units, a portion is no doubt modern, the bulk of average performance, and a sizeable proportion on the verge of collapse and extinction. To apply anything like a uniform wage structure at even an average level must lead to the closure of a considerable number of marginal units. The wage board for the textile industry solved this problem by not prescribing uniform standards at all. It was satisfied with granting uniform increases to such wage scales as existed in the various units. In other industries where uniform wage scales have been prescribed, those scales are necessarily on the low side so as not to knock out marginal units. In other words, what is being prescribed is a minimum wage structure that all units can be called upon to pay. If there had been collective bargaining on a plant-wise basis or a limited multi-employer basis, the majority of units might have been able to pay a substantially higher wage. Thus uniformity has robbed the labour force as a whole of a substantial amount of wage money which would have accrued to it on a limited bargaining basis. Employers are happy because they are required to pay wages only at a very moderate level. Union leaders also are happy because by ensuring a dead uniformity, they have in one stroke removed the complications arising from different wage levels in the same industry. To government it means peace in an entire industry for at least a few years. If in the midst of this all-round satisfaction the total wage bill has fallen, that is a matter which has gone comparatively unnoticed.

The Subject Matter of Collective Bargaining: Employers have long attempted to keep matters involving management prerogatives away from the scope of collective bargaining on the ground that they are exclusively for the management to decide and that trade unions cannot be allowed to encroach on what does not pertain to them. In this they have not been entirely successful even in America where powerful employers have sought zealously to guard their rights against outside interference and encroachment. Often a 'management's rights clause' is included in collective agreements. It sets out at length the subjects reserved for exclusive decision by the management. Typical of such reservations of rights may be cited the following between the United States Steel and its bargaining agent:

> "The authority and responsibility of the company to manage the business and to direct the working forces, consistent with the provisions of the agreement, shall not be abridged.
> The company shall determine and decide such matters as how, where and when the company will establish new jobs or abolish or exchange existing jobs, increase or decrease the number of jobs, apply wage incentives, promote, demote, transfer, terminate or hire employees, maintain the discipline of employees, etc."

Even such an agreement which purports not to relax the grip of the

management over management functions is qualified by the significant expression "consistent with the provisions of the agreement," which means that if the agreement makes any stipulation as to how the reserved matters such as the establishment of new jobs or promotion, demotion, etc., should be regulated, such stipulation will be binding and operative and the employer will not be able to modify it under cover of management's prerogatives.

Notwithstanding management's efforts to hold on to its rights, there has been systematic undermining of such rights under the relentless pressure of trade unions. It was because trade unions wanted to make further inroads into the prohibited field that there was disagreement over the suggestion made in President Truman's National Labour Management Conference of 1945 that the subject matter of collective bargaining be precisely defined. The management members concluded "that the labour members are convinced that the field of collective bargaining will, in all probability, continue to expand into the field of management." The union members felt that it was extremely unwise "to build a fence round the rights and responsibilities of management on the one hand and the union on the other." The National Labour Relations Act itself merely refers to "conditions of employment" as proper for collective bargaining. Because of this vagueness, the National Labour Relations Board has had to build up a series of decisions as to what subjects are fit for bargaining. Even such subjects as sub-contracting, pension plans, merit rating systems, etc., have been declared to be bargainable.

It would appear, therefore, that if employers insisted on a close and precise definition of management's exclusive rights, the mirage of management prerogatives might melt into thin air, but that if unions insisted on this being done in the hope that the entire claim would be disallowed, there would be much insistence on management's theoretical rights. That is why both employers and unions know where their interests lie in this matter.

The scope of collective bargaining has steadily widened since the early days of collective bargaining. Wage rates, hours of work, the number and categories of employees to be employed, the circumstances in which technological improvements are to be introduced and similar matters have all along been acknowledged to be fit subjects for bargaining. Social security measures were at one time deemed to be voluntary grants by the management and hence not subject to collective bargaining, but the National Labour Relations Board has disallowed this claim and brought these subjects within the purview of bargaining. Workloads, speed of operation, job evaluation and similar matters intimately connected with the technique of working have been held to be subjects fit for bargaining.

Collective agreements in regard to hiring and employment policies have covered almost every aspect of these vital subjects. Professional qualifications, apprenticeship programmes, hiring halls on water fronts, the closed shop, stoppage of fresh recruitment well ahead of technological changes, lay-offs,

advance notices for dismissals and similar matters have been covered by agreements.

Disciplinary proceedings are very important matters from the point of view of workers. While the management invariably insists on its right to take action in respect of disciplinary lapses and to impose penalties "for proper cause", unions have managed to secure several safeguards against arbitrary action by employers. Precise procedural requirements have been laid down such as that the offence shall be clearly specified, that there must be notice to the employee and the union, that there should be an open hearing, that findings should be appropriate to the charges and that the result should appear fair to reasonable people. The disciplinary action taken by the employer can be challenged under the grievance procedure. In the past managements used to concede to the grievance machinery only the right to decide whether the offence charged had been proved. The exact quantum of the penalty could not be adjudicated upon by an arbitrator. But this position has been given up. An arbitrator can now give a finding on the appropriateness of the punishment.

It is obvious that lists cannot be drawn up of subjects which are bargainable and of those which are not. No doubt from time to time certain matters may be excluded from the purview of bargaining either by agreement between the parties or by the decision of an outside body but such exclusions undergo modifications from time to time. The field of managerial prerogatives is steadily growing narrower day by day and it will soon be a job to find out what is not bargainable.

Even when a matter is not bargainable, it is not unlawful for a union to continue to bargain in respect of it. The union may succeed in securing concessions in respect of it because of its power of strike. All that is meant by saying that a matter is not bargainable is that if the employer does not adequately respond, he will not be deemed guilty of an unfair labour practice.

Recognition of Trade Unions: Collective bargaining becomes possible only when the employer or the employers' association agrees to recognize a trade union as being representative of workers in the bargaining unit. The right of recognition, which is still the bone of contention in India, was not earned in other countries without serious struggles. Recognition means in effect the opening of the floodgates of demand—a surrender to determined encroachments on the employer's purse and prerogatives. No wonder employers resisted such a move as long as they reasonably could. When trade unions were still unlawful combinations, employers felt no difficulty in ignoring them, but after the odium of illegality was wiped away, employers used all their ingenuity to ignore or circumvent unions. One popular, and at one time potent, method adopted by many employers was to use the "yellow dog" contracts, whereby workers seeking employment had to agree not to join any union. In the United States, the so-called employee representation plans

and company unions flourished for a time. But eventually the forces of lawful combination made themselves felt and the employer could no longer refuse to recognize really strong and representative unions.

In the United Kingdom recognition of unions for the purpose of bargaining is not subject to legal regulation. Tradition and responsibility, sustained by the unpleasant experiences of a less responsible age, have generally been sufficient to ensure due recognition to deserving unions. In the United States, however, the right to bargain collectively and the election of the bargaining agent are now governed by a series of legislation which started in the New Deal Period of the 1930's. Under the National Labour Relations Act, 1935, and the Labour-Management Relations Act, 1947, employees have been given the right to bargain collectively through representatives of their own choosing. The question as to which among several rival unions is entitled to be certified as the bargaining agent has to be settled by the secret ballot, all work-people, whether union members or not, being given the right to vote. The union securing the largest number of votes, provided it receives a majority of the votes cast, gets recognition as the sole bargaining agent for a specified period. In certain countries such as Australia and New Zealand, the basis for recognition of a union is its strength as ascertained from its fee-paying membership. In these countries, unions are judged by their organizational strength and not by any momentary vote-catching tactics. Indian official policy has so far been strongly against elections to settle the relative strengths of unions. The argument advanced is that large numbers of workers who are not members of unions are liable to be momentarily swayed by the tall claims of the most eloquent or dexterous union. There have, however, been criticisms, though seldom satisfactorily supported, that the ascertainment of the fee-paying memberships of unions has been manipulated by the officers of the Government to suit the convenience of organizations basking in the sunshine of official patronage.

We shall deal with these and certain other matters relating to representation in a later section. What might be noted here is that unless a union is recognized as the sole representative of the workers in a bargaining unit, no purposeful bargaining is possible.

Grievance Procedure in Relation to Labour Agreement: The grievance procedure has been dealt with at length elsewhere and need not be noticed here except in the immediate context of the labour agreement. An agreement may be the end of a strike threat, but it is the beginning of a year of differences over its meaning, applicability, appropriateness in particular situations, etc. Though the agreement is often a voluminous document purporting to cover a large number of situations, it cannot provide for every matter and every situation that might arise in a big establishment with thousands of workers. Differences over them can lead to substantial grievances.

Arbitration has come to be recognized as the last stage of the settling of differences over the interpretation and application of collective agreements. The process is largely a judicial one, the arbitrator interpreting the intentions of the parties as revealed through the written agreement. Arbitration is appropriate even for individual grievances over dismissals and punishments.

While collective bargaining relies on the use of the bargaining power or the strategic strength of the two parties, the grievance procedure rests on the principles already jointly drawn up by the parties. Thus though the latter arises out of the former, the two are different kinds of processes.

Arbitration is only the final stage of the grievance machinery. Grievances must be dealt with at the earlier stages in accordance with the accepted procedures.

The object of prescribing a grievance procedure is to ensure that the differences, which seem inevitably to arise out of every agreement, are resolved in the best possible manner without interruption to production. It is, therefore, of the utmost importance that management should ensure that grievances are attended to with the greatest possible expedition. Unions, in turn, should ensure that there are no unauthorized strikes, slow-downs and similar demonstrations affecting the tempo of production. Every employee must receive full information about the mechanics and meaning of the grievance procedure. It is the union's good name that is at stake when a properly-designed grievance machinery is set at naught by the momentary impulses of aggrieved individuals.

The grievance machinery should be a standing one so that it may deal promptly with situations that might arise unexpectedly. The individual employee must have the necessary facilities for taking advantage of the machinery. Only a knowledgeable representative can do justice to the individual's case. So there must be provision for the election of such a representative in every self-contained unit. The representatives must be given facilities by the management to take part in grievance proceedings. They should be spared from temporary lay-offs and similar steps which might immobilize them.

Though restraint in the use of the machinery is necessary, management should not be unduly worried over what might appear to them to be an excessive number of grievance cases. It is also an important requirement of the grievance procedure that power should be delegated to the different levels of officers to settle grievances in their discretion. If foremen or heads of departments are empowered to settle certain types of grievances, they should not be afraid of exercising their responsibility and power for fear of being hauled up from above. Nor should such officers feel it necessary or safe to consult the man at the top before taking decisions. Free and unfettered working of the system will lead to the settlement of practically all grievances at the different levels, leaving only a minute proportion to go to the arbitrator. In the General Motors, out of 40,508 grievances in 1943, nearly half

were settled at the foreman level and less than one per cent were referred to arbitration.

Theories of Bargaining: The nature of the bargaining operation need not detain us long in a study devoted only to the essentials of the process. It is usual to look upon the process from different angles, depending on the emphasis one desires to put on various aspects of the process. Collective Bargaining is variously described as a contract for the sale of labour, a form of industrial Government, or a method of management.

The contracting or market theory shows up the collective agreement as one representing the contract terms on which the employees are collectively willing to work. It is not a labour contract which can be enforced in a court of law against any particular indvidual and ordinarily no damages may be claimed for breach of the agreement. There is, however, a special provision in respect of non-observance of the collective agreement in the Taft-Hartley Act of the United States. It is the basis for a labour contract—a schedule of terms and prices—against which an individual may agree to sell his labour. Every employee has a separate contract with the company. This contract may be a written contract or an unwritten one. It may not even be explicitly expressed, in which case the contract is implied. When a company offers a job on certain terms and the employee accepts it, an implied contract comes into force. This individual contract is influenced and shaped by the collective agreement. The collective agreement is really the company's offer of jobs on terms acceptable to the union and the employees. So it will be presumed that in the absence of a specific written contract with an individual employee, the implied contract with him is in terms of the collective agreement.

While discussing the general concept of collective bargaining we should not overlook the Indian legal position, namely that a settlement, that is, a written agreement between an employer and his workmen, is binding and enforceable in terms of the Industrial Disputes Act.

Collective bargaining is really the collective or cooperative settlement of the price of labour below which an employee would not care to work and an employer would not dare to ask him to work. It is a common standard drawn up collectively so that the bargaining weakness of the individual worker is neutralized to the extent necessary to secure for him a fair deal.

The bargaining agreement is sometimes referred to as the constitution of an industrial Government for the company or industry concerned. It is written by the union and the management meeting in conference and given unto themselves even as a political constitution would be. The shop committees which are empowered to negotiate supplementary agreements are likened to the legislature, the management with its powers of initiative to the executive and the grievance procedure leading to arbitration to the judiciary. The union is allowed to share with the management the sovereignty over the

labour force and to a limited extent uses that power in the interests of its members. The Government theory explains why it is necessary to provide for the exclusive representation of employees' interests, for while different sellers of labour could sell their wares at different rates under the market theory, there could be only one Government and not two or three for shouldering the same responsibility within the same jurisdiction. Two unions like two political parties might aspire to rise to power, but on the seat of authority itself only one can find a place. The representative union alone shares with the management the power to direct the affairs of the Government of industrial polity. Government in industry is carried on by discussion as it is in any State and hence the importance of joint consultation. The sovereignty of the industrial Government also explains why in a number of countries, parties insist on settling their affairs without the intervention of a third party such as the Government or the courts. It is because of this desire to be free from outside intervention that arbitration, voluntary or compulsory, in regard to substantive industrial matters has not made any headway.

Finally, there is the management theory of collective bargaining which treats the latter as a method of making business decisions. Collective bargaining now extends to many matters which were formerly the exclusive preserve of management, but in the territory ceded after hostilities, the terms of the collective agreement replace managerial functions and prerogatives. Thus if seniority, promotion, retrenchment, or rationalization has to be carried out in the manner settled with the union, a collective agreement is, in fact, an instrument for regulating management functions.

These three theories are not mutually exclusive. In several cases of collective bargaining, all three aspects may be present. In the early days of collective bargaining there was perhaps nothing more than a mere contracting for the sale of labour. But as bargaining expressed itself more comprehensively, systematic joint relationships were built up and these relationships could be explained only by the Government theory. As a next step when union-management cooperation programmes were developed, the management theory had to be pressed into service for a rational explanation. Thus it was a gradual build-up of various theories, even as different functions, agreed to in collective bargaining, were super-imposed one on top of another. Moreover, it is quite possible that even the early types of collective bargaining contained the ingredients of all three sets of functions, but naturally it took time for these to be separately recognized.

Certain Recent Developments in the Field of Collective Bargaining: Increasing Impact on the Public: In countries in which collective bargaining as the principal means of adjustment of the relations between labour and management has been in vogue for a considerable time, the outlook on collective bargaining has steadily changed through evolution and development. So long as collective bargaining could be looked upon as a sectional

affair, it was no more than an arrangement between, let us say, an employer and his workers. But the growth of trade unionism and the enormous increase in the number of unionized workers have completely changed the character of collective bargaining. It is no longer a matter of concern solely for employers and workers. A union with half a million workers as members may have in its membership the working populations of whole communities, and what happens to its members might affect the public at large. Wage negotiations in respect of such large numbers may have a profound impact on significant areas of the national income and on the level of prices generally.

Moreover a strike by a vast number of workers of such a union may have a paralyzing effect on vital sectors of the economy—particularly public utilities, steel, coal, railway transport, etc. The development of industry-wide or multi-employer bargaining, which is a significant development of recent years, has two giants ranged on either side of the field of conflict—a mammoth employer group controlling perhaps the whole or the large bulk of a vital industry and an equally big national union controlling all workers in the establishments of the employers. In this war of the Titans, the public are the worst sufferers, being deprived of services indispensable for daily living.

Industry-wide bargaining is also supposed to have certain other serious economic consequences to the public, especially in countries where the economy is not subjected to any state-wide planning and prices are not controlled by statutory regulation. The main apprehended danger is that of the creation of monopolistic conditions which would force up prices and lead to the exploitation of consumers. This danger takes concrete shape particularly when there are collusive deals between employers and unions. In such an event even the normal restraints attendant on the preservation of the employers' interests will cease to exist. The result may well be the cooperative mulcting of the public. Fortunately there are few chances of such conditions obtaining in India. First, our industrial units are all comparatively of small sizes and are, at this stage, incapable of creating conditions favourable for monopolies. Secondly, we have a planned economy which controls production and sales of all vital commodities and fixes ceiling prices for them. While, therefore, there is no danger of infliction of hardships on the public through the creation of monopolistic conditions, the danger of paralysis of the economic life of the nation through prolonged and widespread strikes cannot be discounted.

Since the public is so vitally concerned in large-scale disputes between employers and workers, the practice has grown in advanced countries, particularly since the close of the Second World War, for both sides to educate and win over the public to their respective points of view whenever a major conflict causing inconvenience to the public is likely to result from the failure of negotiations. In countries where there is no provision for compulsory adjudication the power of public opinion to avert a threatened situation is not to be belittled. Neither party would know beforehand what special

powers through emergency legislation or otherwise the government would be forced to assume through pressure of public opinion to avert a crisis. It is, therefore, obvious that each party tries to appear virtuous at the bar of public opinion in any major conflict. Public lectures, nation-wide radio broadcasts, newspaper articles, and similar means are pressed into service on such occasions. Elaborate economic studies are got made, sometimes through independent and unconnected economists. A significant study issued to the public in 1946 by the United Automobile Workers of America was 'How to raise wages without increasing prices'—a title that immediately carried its appeal to a public long groaning under the oppression of high prices. Were it but a collection of platitudes buttressed by the union's wishful thinking of what profits and wages should be, it would have attracted little attention but the study was not of that empty variety. It started with a finding arrived at by the United States Government after a study of sixty-five important industries that the break-even point of the average industry was at 52 per cent of full capacity. On this it built up its thesis that American industry at that point of time was characterized by comparatively low capacity operation, high prices, low wages, and a high profit margin per unit of production leading to a low standard of living of the workers and unemployment. If instead, industry was geared to full capacity operation, the result might well be low prices, high wages and a small profit margin per unit but on many units with a consequent rise in the standard of living and full employment. Arguments such as these are made at a level which immediately commands attention and serious thinking from courts of inquiries, boards of conciliation—in fact from the public.

The table-pounder approach to which we are accustomed in India must gradually give place to more serious thinking and research, without which collective bargaining must continue to remain a technique of the unregulated market place. Unfortunately Indian unions cannot venture on such a course without adequate funds, and they cannot build up funds unless they organize trade unions on proper lines and enforce recovery of adequate union dues.

Penetration into Managerial Functions: Reference has already been made to the problem of managerial prerogatives. Unions, no doubt, profess that they are not concerned with these prerogatives and that what they are concerned with is embodied in the magic formula of "wages, hours and working conditions." The so-called "working conditions" is the large cloak which hides the many and unpredictable demands of unions—the magician's hat which produces any number and kind of bunnies to meet every kind of new situation. It includes matters such as seniority, promotion, workloads, labour strengths, retirement plans, medical check-ups—in fact almost anything that one cares to conjure up. There has, of course, been a reaction to this kind of stretching of the scope of the expression too far. In unfair labour practice enquiries and on other similar occasions, public authorities have

begun to demand that the line be drawn somewhere so that the meaning of the term "working conditions" cannot be stretched indefinitely.

The union's interest in managerial decisions revolves primarily round the security of workers—which term is used in the broadest sense possible of being anything affecting the material well-being of the members. Steady employment at an adequate level of wages is the main plank of such security. Another aspect of security relates to management's policies in respect of lay-off, rehiring, promotions, transfer, disciplinary action, etc. If these are regulated by definite rules, the chances of employee opposition are few. These matters are generally labelled 'personnel policies.' It is in this field that the union has made the largest penetration yet into managerial prerogatives. The autocratic powers of the foreman of the olden days have been effectively shackled or even taken away by personnel policies negotiated with the union. The problem of security has been carried into yet another field, namely, the field of decisions which is concerned with planning and scheduling, the closure or relocation of plants, reduction of the labour force through labour-saving devices, rationalization, etc. These steps can effectively deprive the worker of his employment. Unions have started insisting on their being consulted on any decisions that might affect the security of employment.

Extension of the Area of Protection: The economy of the modern State is so complex that many situations are far beyond the control of the individual employer. Depressions set in and the volume of employment suddenly contracts; prices soar and inflation sets in. Both employment and real wages are immediately adversely affected by such happenings. The employer is as much a victim of such situations as is the union. Labour's expectations in the aggregate must come out of a certain portion of the national income, and that share will naturally depend on the size of the national income itself. That is why in America, where formal overall economic planning is strictly limited and unions have always insisted on a "hands-off" policy on the part of the government, there is growing realization that the fortunes of industrial employment should be reviewed not by management and labour alone but by government. Industry councils on which all three parties would be represented were suggested at one time by the C.I.O.

In India labour has a full voice in the settlement of the five year plans and otherwise in the examination of specific problems affecting industries. It is to be feared, however, that such participation has not been very effective as in the absence of funds and of adequate research facilities labour is not able to identify and penetrate areas of potential danger to its growth and prosperity.

Growth of the Specialist: From what has been mentioned above it is clear that if collective bargaining is to be effective, it can no longer be handled by the union official without the assistance of the research worker and of the

lawyer. New categories of labour experts have come on the scene. The labour relations expert, the labour economics expert, the labour lawyer, the mediator and conciliator, and the labour arbitrator have all found comfortable places in the labour-management relations world. Of these the research worker's job is the most important, and it is by no means confined purely to labour matters. He may have to persuade that farmers have an abiding interest in what industrial labour does and gets, for if the spending capacity of millions of industrial labour is significantly reduced, their purchasing power of farm products will be seriously affected to the detriment of farm prices. So labour has to carry its fight far beyond the traditional field of labour. It has to convince the public that what is bad for labour is bad for the community at large and that labour's burdens are in fact the burdens of the public.

Mediation in Collective Bargaining: Collective bargaining cannot always conclude without the helping hand of an outsider. In difficult bargaining situations, the initial atmosphere of goodwill and reasoned discussion deteriorates into one riddled with threats and defiances. When the negotiator's mind is full of the virtues of his own standpoint, the attitude of the opponent must appear wholly indefensible. That is the stage at which the parties attempt to go their different ways.

Labour-management relationships are about the most difficult to sever. Particular employees may decide to leave the organization or may be removed by the employer, but the employee group must remain if the establishment is to remain at all. A trial of economic strength, which is the final sanction behind labour-management relations, means nothing more than a demonstration as to which party can endure losses and suffering more. That both parties are seriously hurt by a prolonged stoppage is obvious.

Wise leadership would, therefore, demand that negotiations are not broken off until all possibilities of settlement are fully explored. The timely intervention of a mediator might well save the situation.

It is not the mediator's job to evolve specific solutions and to get them accepted by the parties. If he starts with this idea, he may not make any progress at all, for at least one of the parties might feel offended at his ways and not respond at all. His primary duty is to keep the talks going in a reasonably amicable atmosphere and to direct them along purposeful lines. If his methods and behaviour engender confidence in the parties, he would have gone a long way towards achieving success. At some advanced stage in the discussions he may tactfully put forward certain suggestions for settlement, but he must realize that the chances of success are remote if the parties begin to feel that their own efforts have come to an end. The parties must accept any suggestions as their own.

Collective Agreements in India: It is against this background of the nature

of collective bargaining and of its practice in other countries that we must view developments in India.

Collective bargaining of a limited nature began to be practised in the Ahmedabad textile industry in the 1920's after Mahatma Gandhi's intervention in a number of disputes between employers and workers. The Royal Commission on Labour observed in 1931 that the Ahmedabad experiment was the only instance of collective bargaining in the country. The main reason for the slow growth of collective bargaining in the country was the weakness of the trade union organization. Political rivalries which developed within the trade union movement in the 1920's served to weaken trade unions still further and to reduce their bargaining strength. After the Second World War, trade union organization and development received fresh impetus largely because of the sympathetic interest taken by the Government in supporting trade unions with administrative and legislative measures. Tri-partite conferences, industrial committees, the Joint Consultative Board and numerous working parties helped to develop the spirit of collective bargaining. Simultaneously with large-scale industrialization of the country a new type of managerial class, imbued with modern ideas of human relations and scientific management, began to wield increasingly greater influence in management counsels. The result was an all-round support to collective bargaining.

These trends should, over the last two decades, have carried us quite far towards the development of collective bargaining as a positive force in the realm of labour-management relations, but they were partly neutralized by another well-meant, but ill-advised, move on the part of the Government. It is now widely recognized that the institution of compulsory adjudication as a permanent peace-time measure has effectively stunted and even withered the growth of collective bargaining. The ready availability of adjudication effectively suppresses all urge in the parties to come to terms with one another; it creates mistrust and suspicion and keeps alive the spirit of conflict. Thus the post-war period witnessed the generation of two cross-currents — one supporting and encouraging collective bargaining and the other scotching it effectively.

Collective agreements can be entered into at the national level, the industry-cum-region level, or the unit level. A study made by the Employers' Federation of India of 114 agreements between 1954 and 1961 showed that 85 per cent of the agreements were concluded at the plant or company level.

The so-called "Delhi Agreement" on rationalization might perhaps be cited as an instance of a national agreement which applied to industries generally and not specifically to any particular industry. It was the result of a tri-partite conference convened by the Government on account of an apprehension that measures of rationalization necessary for industrial growth and increased productivity were being obstructed by unions in a vain attempt to stave off unemployment. It would, therefore, be more proper to classify this

agreement with tri-partite agreements rather than collective agreements. This was only a gentleman's agreement and had no binding force which could be enforced.

At the level of industry, collective agreements have been quite common only in the textile industry. These have been regional rather than national agreements. Some of the important earlier agreements paved the way for others to follow. Among these were the two agreements, both dated 27 June 1955, entered into between the Ahmedabad Millowners' Association and the Textile Labour Association. The first agreement provided that disputes between the member mills of the Ahmedabad Millowners' Association and the Textile Labour Association should be settled by mutual negotiations and that if no settlement was possible, they should be sent for arbitration. There were to be two panels of arbitrators, one supplied by each association and a third panel of umpires. When a dispute arose, an arbitrator was nominated by each party from its panel and the two arbitrators selected an umpire out of the third panel or from outside so that in case of difference of opinion between the two arbitrators, "it shall refer their individual decisions to him for giving his award." The award of the Board was to be final and binding on both the parties. This agreement followed the pattern developed in Ahmedabad since the early days of Mahatma Gandhi's intervention.

Under the second agreement, 1,20,000 textile workers were assured of a minimum bonus of 4.8 per cent of their annual basic income for five years irrespective of the profit and loss position of the mills. The agreement also imposed a ceiling of 25 per cent of the annual basic wages as bonus. It contained provisions for "set-off", by which mills which had to pay bonus in spite of incurring losses could set-off the amount paid against profits in future years. Amounts available under the Full Bench Formula in excess of the maximum limit of 25 per cent of basic wages would be kept in a separate account to be drawn upon in future years for making bonus payments.

Another important regional industry-wide agreement was the one entered into between the Bombay Millowners' Association and the Rashtriya Mill Mazdoor Sangh, Bombay, regarding bonus payments for the period 1952 to 1957. The agreement generally followed the Ahmedabad pattern with a minimum bonus equal to 15 days' basic wages regardless of profit and loss. It also provided for the appointment of a committee headed by a Judge and with a representative each of employers and workers to go into the question of the total requirements of rehabilitation and renovation of the industry till 1961.

In September 1956 an agreement was entered into between the Silk and Art Silk Mills' Association and the Mill Mazdoor Sabha. It covered the years 1955 to 1957 and provided for a minimum of 10 days' basic wages as bonus and a ceiling of three months' basic wages.

The majority of the industry-cum-region-wide agreements were, and still are, in respect of bonus. There has been a tendency in recent years for

bonus to be settled on an industry-cum-region basis. This tendency will presumably continue until the legislation in respect of bonus, now on the anvil, is passed into law. Industry-wide agreements do not, and perhaps cannot, deal with other important subjects such as wages as the size of the establishments and their capacity to pay vary so much that any kind of a common yardstick may be out of the question. It is true that the Government has been setting up wage boards to evolve wage structures for the more important industries and that there has generally been a measure of uniformity in respect of the recommendations, but these, like settlements in conciliation, are not unfettered collective agreements.

Collective bargaining agreements in individual establishments or companies are generally of three kinds. To the first category belong agreements which are drawn up after direct negotiation between the parties without the intervention of a third party. They are wholly voluntary in character and could be called true collective agreements. To the second category belong the agreements which are technically called "settlements" under the Industrial Disputes Act, 1947. These are agreements entered into with the active assistance and persuasion of the Conciliation Officers functioning under the Industrial Disputes Act. There is a measure of compulsion behind these settlements as invariably they are negotiated after a dispute has arisen and because the parties know that failure to enter into an agreement might involve them in a compulsory adjudication. The third category consists of agreements entered into between the parties after a dispute has already been referred for adjudication to a tribunal. Such agreements, leading to "consent awards", also cannot be classed with purely voluntary agreements.

The study made by the Employers' Federation shows that purely voluntary agreements constituted 39.5 per cent of the total number of agreements studied, settlements 57 per cent, and consent awards 4 per cent.

Some of the collective agreements of the first category concluded at the level of the undertaking approximate to collective agreements contracted in the more advanced countries and are elaborate in their scope and content. The agreement entered into between the Tata Iron and Steel Company and the Tata Workers' Union at Jamshedpur may be cited as typical of the comprehensive agreements evolved in the true spirit of collective bargaining. This is also one of the few agreements in India which contain provisions for union security and workers' cooperation in schemes aimed at increasing productivity. The preamble of the agreement says that the object is to establish and maintain orderly and cordial relations between the Company and the Union so as to promote the interests of the employees covered by it and the efficient operation of the Company's business. The parties realize the importance and need of maintaining good and cooperative labour-management relations for the effective and timely implementation of the schemes of modernization and expansion programmes involving a capital expenditure of about Rs. 110 crores.

The Company agrees to a union membership security system and to the collection of union subscriptions through the payroll in respect of employees other than the supervisory staff. The Company is agreeable to joining hands with the Union in approaching the Central or State Government for any alteration of the law required to permit maintenance of membership and check-off provisions. This has reference to section 7(2) of the Payment of Wages Act, which does not provide for deductions of membership fees of union members. The Company undertakes to give all facilities to the office-bearers and full scope for the legitimate activities of the Union. This is a great concession under Indian conditions because few employers are prepared to give such facilities because of the lack of responsibility shown by several unions and of the possibility of abuse of facilities.

The Union recognizes a number of management prerogatives, including the right of the Company to hire, discharge, and discipline employees. It recognizes, for instance, the "functions, powers and authorities belonging solely to the Company", and accepts its legitimate right in the matter of personnel policies, with the proviso that "where the employees' interests are adversely affected, the Union is consulted before the Company takes a decision and the Union reserves the right to represent their cases to the Management."

The principle of closer association of employees with the management is recognized as it would help (*a*) in promoting increased productivity for the benefit of all concerned, (*b*) in giving employees a better understanding of their role and importance in the working of the industry and in the process of production, and (*c*) in satisfying the urge for self-expression.

The Union agrees to give full support and cooperation to the Company in securing improvement in labour productivity. To this end the parties agree on the need to establish a standard force in each of the departments and also to the standard strength being fixed by the Company after consultation with the Union. In return for such support for measures concerning productivity, the Company gives certain guarantees to the Union. These are (*i*) that there will be no retrenchment of existing employees, (*ii*) that when employees are required to work in jobs for which they are not qualified, they will be trained for such jobs, and (*iii*) that the present average earnings of employees transferred or under training will be guaranteed to them.

The number of men required for the normal operation of each existing section or department should be fixed and such fixation completed by the Management within a period of one year. If there is any disagreement regarding such number, the matter shall be referred to arbitration by independent experts. When the requisite number is fixed for each section or department, the surplus men can be transferred to other departments or to a new plant as provided in the Standing Orders.

The Company and the Union agree that a programme of job evaluation should be undertaken in order to determine the value of each job and to

eliminate inequities with a view to simplifying the existing structure of wages. A Joint Committee consisting of an equal number of suitably qualified representatives of the Company and of the Union with an independent expert as Chairman is to be in charge of job evaluation.

Pending the evolution of a wage structure based on job evaluation, the Company agrees to revise wages on an *ad hoc* basis at the rate of two annas per day for daily rated employees and Rs. 3-4-0 per month for monthly rated employees and the clerical staff with a further similar payment for the following year.

Other provisions in the agreement include.

(1) Construction by the Company of 300 one-room quarters and 1,700 two-room quarters by 31 March 1959.
(2) Installation of water taps in the Company's quarters.
(3) Extension of the indoor accommodation in the main hospital.
(4) A liberal policy of promotion, of filling vacancies at higher levels by internal promotion rather than by outside recruitment.
(5) Formulation of a mutually-agreed upon grievance procedure for the settlement of grievances in the shortest possible time and at the lowest possible step.
(6) Improving the working of the works committee.
(7) Agreement on the maintenance of discipline and avoidance of waste.

A supplementary agreement entered into between the parties on 4 August 1956 provides for the setting up of a detailed scheme for the promotion of closer association through a three-tiered system of Joint Councils of Management and Employees. At the base of the three-tiered organization will be joint departmental councils, one for each department of the works. Above them will be a joint works council for the entire works and parallel to this a joint town council dealing with matters relating to the Company town. At the top level will be a Joint Consultative Council of Management. All the bodies will be advisory in character.

The Joint Consultative Council of Management will consist of eight representatives of management and an equal number of representatives of the employees besides a chairman. The representatives of the Company and the chairman shall be nominated by the Company. The representatives of the employees shall be nominated by the Union from among the employees of the Company, except that not more than two of such representatives may be officers of the Union who are not employees of the Company. The Council of Management will advise the management on all matters concerning the working of the industry in the fields of production and welfare. The Council will also advise the management on economic and financial matters which do not affect the relations of the Company with the shareholders or the managerial staff or concern taxes or other matters of a confidential nature.

The Council will consider any matter referred to it by the Joint Works Council or the Joint Town Council.

A somewhat similar agreement was entered into between the Modi Spinning and Weaving Mills Co. Ltd., Modinagar, and the unions operating in that establishment on 6 March 1956. However, the provisions relating to maintenance of membership and check-off are not included in it. There is provision for the association of the employees with the management, the object of the association being to promote increased productivity for the benefit of the industry, the employees and the country, to give employees a better understanding of their role and importance in production and to satisfy their urge for self-expression. A Central Committee and a number of Joint Consultative Committees, one for each department are to be formed. These committees will deal with working conditions in the plant such as ventilation, lighting, noise, temperature and factory hygiene, amenities such as rest rooms, health services, housing, canteen, recreation, safety matters, and measures for increasing efficiency.

The agreement contains a provision for evolving a scheme for the payment of bonus on the lines of the scheme evolved by the Ahmedabad Millowners' Association with a guarantee of minimum bonus every year. It also contains a provision for rendering financial assistance to workmen falling victim to malignant diseases.

Yet another important agreement is that concluded in the Indian Aluminium Limited, Belur, on 31 August 1956. It contains a number of special features. Wage rates are to be fixed on the basis of job evaluation done by the Joint Job Evaluation Committee. A definite procedure has been laid down for job evaluation. Standard rates of production and labour strengths have been evolved for particular operations, these being settled through work study.

The payment of bonus on the Company's earnings or profits is discarded as unsatisfactory. Instead, bonus is sought to be related to plant efficiency and output. Two schemes called the Monthly Production Bonus Scheme and the Annual Productivity Bonus Scheme have been incorporated in the agreement.

The agreement also provides for canteen benefits, grain store benefits, lunch allowance and night shift tiffin. Under the "special sick allowance" the Company undertakes to pay one day's wages for the first two days of sickness which are considered as waiting period under the E.S.I. Act and for which no cash benefit is payable under that Act.

There are also other provisions for provident fund, gratuity, leave and holidays with pay. Five joint committees have also been provided for as part of joint consultation, one each for personnel relations, production, evaluation, standards and canteen.

In general it may be said that purely voluntary agreements, entered into with the object of supporting collective bargaining to the largest possible

extent, are comprehensive in character and cover most of the situations that might lead to disputes during the period of the agreement. They include provisions regarding wages, terms of employment, working conditions, labour-management relations, fringe benefits, grievance procedures, union security, bonus, etc. This type of agreement deserves further encouragement as, by providing for most of the possible situations, they serve to avoid the development of disputes.

The majority of agreements entered into by employers and their workmen belong to the category of settlements brought about in conciliation of disputes which have actually arisen. They are much less elaborate in scope than agreements of the first category as their object is to deal with disputes which have actually arisen rather than to evolve a code of adjustment for a specified period. It is unnecessary to give details of settlements; they generally cover subjects such as wage scales, classification of workmen, service conditions, revision of production bonus schemes, gratuity rules, annual bonus, rationalization, etc. Often when unions get settlement of several major demands, they are content to withdraw the remaining demands. A settlement in Bombay in September 1963, for instance, covered demands in respect of basic wages, dearness allowance, gratuity, annual bonus, and rationalization. It contained a provision that "in view of the settlement in respect of the above major demands, all the remaining demands, viz., leave, permanency, incentive bonus, acting allowance, night shift allowance, open yard allowance, heavy duty allowance, house allowance, dresses, boots and shoes, dispensary, ambulance, facilities for union activities and canteen are hereby withdrawn."

Settlements arrived at in the course of conciliation cannot be called collective agreements in the true sense. Conciliation, as practised in India, is not entirely a process of "inducing the parties to come to a fair and amicable settlement of the dispute" as section 12(2) of the Industrial Disputes Act would have us believe. There is a considerable amount of pressure brought to bear on the parties, particularly the employers, to come to terms with the opposite party. The unions are always prepared to give up some of their minor demands if they are going to get something substantial for no effort on their part. In fact they often bolster up their demands in the full knowledge that they will soon be called upon to be reasonable and to give up a portion of their demands in return for concessions effortlessly gained. Thus it is invariably the employers who are under constant pressure from conciliation officers and are subjected to no small embarrassment from time to time. The conciliation officer has some of the trappings of a civil court. He may, for instance, "call for and inspect any document which he has ground for considering to be relevant to the industrial dispute" and for that purpose he has the same powers as are vested in a civil court under the Code of Civil Procedure for compelling production of documents. The conciliation officer has to "investigate the dispute and all matters affecting the merits and the right settlement thereof." He is entitled to enter the premises of any

establishment to which the dispute relates. In Bombay State a conciliation officer may or may not "admit" to conciliation a particular dispute. All these statutory provisions bearing on the powers and the working of the conciliation officer tend to invest him with a halo of authority and to make conciliation something more than mere inducement or persuasion. Moreover the consequences of a failure of conciliation have probably an even more decisive influence on the conduct of the parties. The conciliation officer might be able to persuade the appropriate government that adjudication of the dispute is called for if the parties are rash enough to reject his own suggestions. A threat of adjudication has often considerable influence over the conduct of the employer. Many employers would much rather accept burdens which, though heavy and unjustified, are at any rate known beforehand and specific than fight out a prolonged battle in the law courts with uncertain results. The concept of social justice takes on direction and dimensions according to the fancies of each tribunal or court, and the employer may well find himself faced with a situation in which the higher court's interpretation is wholly adverse to him. Moreover the harassment of a prolonged litigation is even more burdensome to the employer than to the union contrary to popular belief as he will not be left in peace to concentrate on production problems for the duration of the litigation. Settlements are, therefore, agreements entered into under a measure of compulsion from the conciliation officer. They are not agreements freely entered into in bi-partite negotiation between the employer and the union. In a settlement entered into in an important Bombay company in May 1961 the memorandum of settlement starts with a recital that the union had raised a number of demands and that as the dispute was not mutually settled between the parties, the General Secretary of the union had asked for the intervention of the conciliation officer. Thereafter in the light of preliminary discussions, the conciliation officer "admitted in conciliation" 7 out of 12 demands. He must have ruled out the remaining five demands as not worthy of consideration. The agreement does not say that the union agreed to give up the five demands. During the period of the agreement the parties agreed not to raise any dispute on the points agreed to in the settlement and that "except annual bonus issue, the workmen and the union shall not ordinarily raise any other general dispute of a collective nature involving financial burden on the management."

A number of agreements are entered into between employers and unions when they are actively engaged in conducting references pending before industrial tribunals. Having got to court, and knowing that they will not get out of it without a decision of the court, they sometimes make a virtue of necessity and try to compromise and settle out of court. In this endeavour they get every encouragement from the tribunals themselves which rightly believe that a decision evolved by the parties themselves and hence acceptable to them is far better than one imposed on them. When a settlement is

reached in such circumstances, the tribunal merely records the terms and gives legal effect to them by passing a formal award.

While the large majority of agreements are those entered into in the course of settlement of specific disputes, there is a fair proportion of genuine collective bargaining agreements. Quite a number of these agreements run not for one year but for three or even five years. The study made by the Employers' Federation showed that of the agreements analyzed, 31.6 per cent had a duration of 3 years, 7.9 per cent of 4 years, and 14.9 per cent of 5 years. One-year and two-year agreements accounted for only 7 per cent and 5.2 per cent. This shows the reluctance of the parties to spend too much time over short-term agreements. Generally they deal with the more important subjects concerning the terms and conditions of service. In spite of the length of some of the agreements, they are not as exhaustive as the agreements entered into in advanced countries. There may not also be necessity in India for agreements to be so exhaustive, for several subjects such as lay-off, retrenchment, provident fund, hours of work, leave with wages, social security, etc., are all governed by legislation and workers do not perhaps think it worth while to spend time over getting supplementary benefits in regard to these. That is why they concentrate on matters which have not yet been regulated by law.

It will be a long time before collective bargaining brought about by the initiative of the parties becomes a regular feature of labour-management relations in India. In fact it is doubtful whether collective bargaining will become a widespread movement so long as compulsory adjudication is round the corner. By resorting to compulsory adjudication the parties shift the burden of decision on controversial points and disputed claims to a third party. That is an easy way of running away from responsibility, for it is infinitely more difficult to argue out one's case to the contestant directly and to try to convince him of one's standpoint. But the parties will not, or rather cannot, shirk that responsibility when there is no one else to decide that issue for them. It is quite possible, therefore, that collective bargaining will make real headway only when compulsory adjudication is withdrawn from much of the industrial field and union leaders drawn from the ranks of workers learn the technique of negotiation and become really skilled in bargaining. The trend of collective bargaining in the post-war era leads us to entertain the hope that when the inhibiting influence of compulsory adjudication is withdrawn, the development of collective bargaining will be both quick and powerful enough to fill the void left by the absence of compulsory adjudication.

CHAPTER XIII

SURVEY AND SUGGESTIONS — TRADE UNIONS

Implications of Industrial Democracy: India is a Sovereign Democratic Republic, and if it must remain so, it must build up and sustain the principles and practices that go to make the democratic way of life. The democratic form of government is a hard one to sustain, especially in countries which are economically backward and wish to catch up, in the space of a few decades, with the more advanced countries which have taken centuries to come up to their present levels. Nevertheless, in our hurry to build, we should not forget the methods. A number of countries, which became independent after the conclusion of the Second World War, adopted, in a frenzy of idealism, the democratic form of government with sovereign parliaments, representative governments, independent judiciary and so on, but already a number of them have found the task beyond their powers and converted themselves, in effect, to other forms of government even when they choose to call themselves guided democracies and the like. A society proclaiming itself to be a democracy of the western type can easily adorn itself with some of the trappings of democracy, but it cannot so easily instil into the system the motivations that make the truly democratic machinery turn smoothly and efficiently. Democracy involves participation of the public in the governance of the State in an appropriate manner. The administration of the State by the selected representatives of the people will be in accordance with the majority views of the public resulting from the interaction of forces set in motion by different pressure groups representing different interests and aspirations. It is of the essence of democracy that there should be such pressure groups, for an unopposed system will degenerate, sooner or later, into some form of authoritarianism. Supreme and unlimited power in the hands of those in charge of government cannot but turn their heads and convert them into dictators. A strong and effective opposition is, therefore, necessary to temper power with responsibility. Even the best, or perhaps the most stable, of the new democracies has found it difficult to evolve, in so short a time, a political structure based on an effective two-party system. Hence the risk, actual or at any rate potential, of the newly-established democracies losing their characteristics and becoming some form of dictatorship—a one-man show founded on ambition and audacity.

In a world littered with such newly-established, and as yet unstable, political democracies, the industrial democrat's position is none too secure. According to him a political democracy would be lacking in vigour and substance if the important pressure groups forming the pith and marrow of

its existence were themselves not truly democratic. Political democracy must march side by side with industrial democracy, for they are inter-dependent and complementary.

Industrial democracy is generally assumed to have three identifying characteristics, namely, (*i*) that trade unions, which are the means of practising democracy in industry, must be independent both of the State and of management, (*ii*) that only trade unions, and no other agency, can represent the industrial interests of workers, and (*iii*) that the methods adopted by the trade union movement in furthering the interests of workers should be the same irrespective of whether the industry is in private hands or has been nationalized and placed in the public sector.

Of these characteristics, the existence of a strong, united and independent trade union movement is clearly the most important. It is this that will eventually decide whether industrial democracy is going to survive or perish. If it is necessary to nurture opposition in politics, it is even more necessary to encourage and build up independent trade unions even if they effectively play the role of opposition in industry to the dismay and despair of managements. If opposition is necessary in industrial democracy, the public sector cannot be spared its share of opposition merely because it is ultimately owned by the people themselves.

Ideas about the independence of trade unions have varied from time to time and from country to country. Theories of industrial democracy have moved from those of revolutionaries and reformists to those of independent and responsive cooperators. Times were when Marxists sought, as an immediate possibility, the destruction of the Capitalist State and the establishment of a Proletarian State in which there would be no capitalists and industry would properly be under workers' control. There were movements aimed at transferring industry from the employer to workers. If only the capitalist could be removed, some people argued, the workers would be in a position to run the industry as they liked. But this required a political upheaval not feasible in many lands or congenial to the people's outlook.

Talks of working-class supremacy have never become a reality in any democratic society. It is talked of when revolutions are believed to be in sight, but is soon dismissed and forgotten when a democratic political set-up starts functioning. The technical and organizational requirements of modern industry are so exacting that none but a well-trained bureaucracy can run it. So all talk of control and management of industry by workers disappears as soon as the difficulties and complexities of management come to light.

If the working classes cannot have complete control of industry, they could at least have some measure of joint control with managements. This view led to the so-called guild socialism. Guilds representing both manual and non-manual workers would exercise control within the four corners of agreements with the State. Their influence and power would steadily creep towards their ultimate goal of establishing a socialist commonwealth. This was called the

technique of 'encroaching control.' When a full-fledged socialist commonwealth was established, guilds would run industry subject to agreements embodying protection for other sections of the State, particularly consumers. The management of industry would then become a function of workers. This did not necessarily mean the immediate or complete elimination of the employer, though full-fledged socialism and nationalization of the means of production were certainly the objectives. So long as the prescribed output of accepted quality was ensured, the agreement between the employer and workers would enable the latter to arrange production as it suited them. Thus it was a sort of self-government under capitalism rather than the overthrow of the capitalist system itself.

Workers' control, guild socialism and similar slogans of the revolutionary school did not have any prolonged lease of life in most democratic countries which saw no reason to abolish capitalism as such. If then capitalism could not be abolished, it could certainly be reformed in a way which would ensure to the worker a square deal. This led to the evolution of the concept of industrial democracy which received encouragement early in the 20th century and found extended application through the two World Wars. As part of this new concept were tried such experiments as joint consultation, co-determination, joint control, and workers' participation in management. We are still in this era of industrial democracy; it has not yet been discredited and discarded in favour of some other new theory. We have left off such old-fashioned ideas as worker control or worker domination and are prepared instead to work out the salvation of the working classes through democratic cooperation.

The most important workers' institution for cooperation with employers is the trade union. Experience shows that trade unions to be effective must be independent—independent alike of the employer and of the State. The measure of independence that will ensure the best results is, however, not easy to determine. The need to be independent of the State arises from the fact that trade unions can effectively protect the interests of their members only through strength and not through subordination or dependence. Even as a nation can ensure peace only through armed strength, trade unions can be effective only through organized strength. A trade union which constantly supplicates to ministers and governmental authorities for support or succour under or outside the law may receive favours for a time but not its rights or dues. This does not, however, mean that it should have no truck at all with government. A trade union may justifiably collaborate with political parties favourably inclined towards its aspirations and give them all possible support. It could cooperate with government in such matters as social security or welfare measures affecting the workers. Trade unions may send representatives and advisers to public bodies and tri-partite committees and conferences set up by government on economic and social problems. Though trade unions must be independent, this does not preclude the State

from enacting laws for exercising certain measures of control over the functioning of trade unions, and so long as such laws ensure the better functioning of trade unions without interfering in their internal autonomy, trade unions will still be deemed to be independent. In almost every democratic country, trade unions are subject to a greater or less degree of legislative control. Trade unions in Australia, for instance, are subject to the jurisdiction of a whole array of labour laws, but they are nevertheless deemed to be some of the most independent in the world. There are trade union laws in the United Kingdom and quite a number of legislative measures in the United States, some of which deal with particular aspects of trade unions. Besides the Taft-Hartley Act of 1947 which deals with labor-management relations, the Landrum-Griffin Act of 1959 deals extensively with the internal regulation of union government.

The State can emasculate trade unions not necessarily by directly interfering with their internal autonomy, but by taking over many of the functions which a trade union, rather than the State, should perform in the field of industrial relations. The case of trade unionism in France is to the point. There trade unions find themselves effectively deprived of their chances of developing proper collective bargaining because of the regulation of wages and other vital conditions of employment under State laws. Too much of protection can hamper growth.

Trade unions must be independent of managements even to a greater extent than they should be of governments. This is one of the most serious problems of trade union organization and is the subject of both international conventions and national laws. In the United States, for instance, section 8 of the National Labor Relations Act, 1935 (Wagner Act), and the Taft-Hartley Act, 1947, which extensively amended the Wagner Act, make it illegal for employers (*i*) to interfere with, restrain, or coerce employees in the exercise of the guaranteed rights to self-organization, to bargain collectively through representatives of their own choosing and to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection; (*ii*) to dominate or interfere with the formation of unions or to aid or support the unions of employees; (*iii*) to discriminate against employees in lay-offs, promotions, or other conditions of employment because of the employees' membership or activities in a union; and (*iv*) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under the Act. The employer is also required to bargain collectively with the duly designated representatives of his employees.

The days of company unions are more or less past in western countries but not so in the newly-independent countries which are still experimenting with both political and industrial democracies. The distance which trade unions must keep from employers is, however, very uncertain and it is this uncertainty which has led to controversies as to how far labour can agree to be associated with management. The fear that too close an identification

of trade unions with managerial decisions might jeopardize the freedom of action of the former has been responsible for creating much opposition both in U.S.A. and in U.K. to formal schemes of labour participation in management. A union which allows itself to be made party to a managerial decision, it is argued, must sooner or later sacrifice its own interests if it must appear reasonable in the eyes of management and take decisions conducive to management.

Trade unions can, therefore, cooperate with management only in ways in which their independence and freedom of action will not be compromised. The most common form of such cooperation takes the form of collective bargaining. Some Indian employers with bitter experience of the complications created by rival unions must feel amused at the suggestion that the wrangles of the bargaining table are to be classified as a species of cooperation, but that, in fact, is so. Collective bargaining, in essence, is the technique of differing with a view eventually to agreeing.

Enough has been said elsewhere of the technique of collective bargaining. The essential skill in collective bargaining lies in a party's appearing to be very reasonable even when it is not and in its adopting persuasive and convincing ways in preference to empty threats. An untimely or unnecessary threat puts up the back of the opponent and almost certainly leads to the break-off of negotiations. Threats have no place so long as negotiations continue. Nobody can be converted or coerced by mere threats. Collective bargaining is an essay in tactics aided by statistics and arguments which lend plausible support to a line of advance. A successful bargainer pushes the opposite party gently but steadily towards a position from where acceptance of the demand in part at least would seem natural and not forced. Great skill, wisdom, and knowledge are needed to get the maximum by yielding the minimum. Bargainers must be men of infinite patience who will not be provoked to a premature break-off.

To persuade a determined employer to yield to reason is an art requiring exceptional abilities which most unions in recently industrialized countries lack. These unions have neither the patience nor the ability to convince the employer of the reasonableness of their demands. The putting forward of fantastic demands often destroys all semblance of reality and hence all chances of success. Weak and immature unions also lack the unity, the financial strength, the organization, and the staying power needed to make any large-scale strike a success. An unsuccessful strike greatly weakens a union, and such strikes are very common in countries which have not developed adequate bargaining skill.

Not able to bargain properly, not willing to be written off completely by the employer, the inexperienced union all too readily petitions for government support and expects legislation after legislation for ensuring the welfare of labour. We are often told, sometimes by Ministers themselves, that there are far too many labour laws, but who is responsible for the excessive

amount of legislation? It is the unions which are incapable of bargaining effectively that have created the legislation-mania in the minds of our popular Ministers. The weak union wants disputes to be sent for compulsory adjudication so that somebody else may secure for it what it cannot on its own. When this happens, that is the final blow to collective bargaining. When the State legislates, it does so subject to numerous pressures, including those from employers and other vested interests. Naturally workers can never be fully satisfied with the results that flow from a system of statutory regulation of industrial relations. The result invariably is discontent, if not despair. Industry cannot possibly thrive when workers, smarting under a sense of frustration and failure, believe in doing only the minimum amount of work necessary to keep their jobs. It must stagnate and lose its place in international markets. These consequences of frustration are generally avoided under a successful system of collective bargaining. When there is a settlement by the process of give and take, there is a measure of contentment on the part of workers who settle down to their business in the belief that if the establishment prospers, they will prosper too. That is why most industrial democracies stake heavily on collective bargaining for the cultivation of industrial relations and even oppose any State legislation or intervention in the matter. It is true that various legislative measures may set the framework within which bargaining may take place and that they may even interfere with the bargaining process itself in special cases, but the basic reliance on collective bargaining would not be weakened on that score.

Collective bargaining, as a substantive process between the employer and the union, may be assisted and supplemented in a variety of ways. There may be State machinery and laws for conciliation and mediation. These processes may be purely voluntary or, at times, even compulsory. There may be Courts of Inquiry to investigate particular claims and to lay bare the different aspects of the issues and the relevant facts pertinent to them before the public. There may be facilities for voluntary arbitration in respect of either grievance disputes or contract disputes. But the mainstay of all such arrangements is free and unfettered collective bargaining; without it all these processes would have lost their significance.

State action, even when well-meant, can be such as to undermine collective bargaining and to make it impotent. Compulsory adjudication is one such step. Weak trade unionism and compulsory adjudication often, though not always, go together, for compulsory adjudication is invariably the result of the pleadings of weak unions and of their inability to get on without it. It is also a sign of the absence of effective leadership in the trade union field. In infant democracies it is very easy for the so-called labour leaders to persuade popularly-elected ministers of government to refer disputes to tribunals for compulsory adjudication. Ministers, in their perpetual quest of popularity, find relief in referring troublesome, and often even explosive, labour disputes for adjudication to a third party. Labour and political

leaders are responsible for making ignorant workers put faith in adjudication as the best method of settlement of industrial disputes.

Other permissible forms of cooperation with management such as joint consultation, co-determination, and participation in management found in industrial democracies must be judged from the point of view of their assisting or hindering the development and functioning of collective bargaining, which, in fact, is the true barometer of industrial democracy.

Examination of the functioning of trade unions in various countries confirms the view that if the object is to build up industrial democracy suited to the democratic form of government, trade unions have to be independent both of the State and of management and that collective bargaining is about the best-designed mechanism for looking after the interests of the working classes. Liberty and independence are the key-notes of democracy; collective bargaining goes to build up these characteristics. Independence does not mean indifference. Trade unions cannot afford to take up the position, once adopted by the revolutionary Industrial Workers of the World of the United States or the syndicalists of France, that they will have no agreements with employers and that employers should be forced to concede the demands of workers without expecting anything in return. Trade unions must cooperate with both the government and the employer—whether it be in evolving legislation, in holding tri-partite consultation or in arriving at collective agreements. What they should not do is to lose their independence by surrendering their problems to the tender mercies either of the employer or of government.

The second principle of industrial democracy is that only trade unions can properly represent the industrial interests of the working classes and that the majority union should have the right of sole representation. This is really an extension of the principle of the development of a strong and independent trade unionism. Trade unions cannot become strong or effective if other agencies step into the field to win the confidence of the workers; nor will the movement be strong if a number of warring unions are allowed to share the responsibility of labour representation. Experience of the growing strength of shop stewards in the United Kingdom and of the difficulty of controlling them has warned British unions not to hand over too much power even to an allied or subordinate agency. Where works committees, works councils, joint committees, and similar bodies are set up, the trade union which is the bargaining agent takes care to see that the workers' representatives on these bodies are its nominees and that specified responsibilities are entrusted to these bodies which do not ordinarily include the right to bargain with the employer over the emoluments and the terms and conditions of service of the workers. These latter preserves are zealously guarded by the representative union as its sole prerogative. It would be wrong for employers to attempt to convert any of these bodies into company unions and to get controversial matters accepted by such bodies behind the back of the recognized

union. There is no short-cut to agreement with the bargaining agent; agreement can be only through effective and painstaking collective bargaining and not through questionable deals with bodies rival to the recognized union.

The third principle of industrial democracy is that the ownership of industry is irrelevant to good industrial relations. Apart from the fact that in most democracies very little of industry is nationalized, nationalization cannot alter the basic relationship between the employer and his employees. Though the worst abuses of capitalist exploitation may not, and should not, be felt in nationalized industry, largely because of the absence of the personal profit motive on the part of the paid managers of the undertakings, the management cannot, and should not, blindly identify itself with the workers as the State has obligations to various other interests, particularly the consumers and the tax-payers. Nationalized industries are run not primarily for the benefit of the employed. Countries which undertake large-scale nationalization might, in all probability, have large development plans to fulfil and cannot prejudice the success of planning by permitting excessive current consumption and depriving the plans of the resources for fulfilment. A planned economy aiming at specific objectives will be more interested in achieving the targets all round rather than in catering to group interests. Nationalized industry must, therefore, in general attend to the task of making adequate profits, and this it can do only if it behaves substantially like a good private employer neither seeking undue advantages by repelling the demands of workers on the ground that the profits of a factory belonging to the public should be made available to the public as a whole rather than be distributed in the form of higher wages to a small section of the public nor making a liberal gift of the profits to workers on the plea that the State cannot be as tight-fisted as the private employer. There have been many complaints against public sector managements in India, the main charge being that they are not responsive to the grievances and demands of workers even to the extent the private sector employers are. These might be due to the inexperience of the public sector managers. There are hopeful signs that the public sector is learning its lesson and that managers recruited from the civil services and other industrially inexperienced sources are rapidly adapting themselves to the requirements of the industrial environment. Their attitudes and approach are also rapidly changing. Early resistances to the reference of disputes and demands to industrial tribunals and wage boards have worn away. The principle of granting bonus in most public sector undertakings more or less on the same basis as in private industry has been conceded. Public sector industries have experienced substantial labour troubles. Growing experience and the force of circumstances have joined together to educate the public sector managers in better human relations in their undertakings. No manager wants more labour trouble than is forced upon him, and it must already have become evident that the method of keeping a contented labour force is no different in the public sector from what it is in the private sector.

When we talk of the independence of the trade union movement, it is as well to remember that the modern State cannot shirk its responsibility, or abdicate its power, to ensure that in any group struggles the public at large do not unduly suffer. The Government is sovereign; its will must prevail when it is backed by the public interest. The vital services on which the life of a highly industrialized community depends must be rendered regardless of the merits of an industrial dispute. The State has, therefore, the inherent responsibility and the right to be armed with the necessary statutory authority for prohibiting the discontinuance or disruption of public utility services. This must be an unqualified privilege of the State, by no means conditioned by its responsibility for ensuring a just adjustment of the disputes that have threatened stoppage of the public utility services.

It is perhaps in the United States that the largest measure of freedom exists for management and labour to adjust their differences in such manner as they deem fit, including the calling of a strike or lock-out. Even the Taft-Hartley Act of 1947, so vigorously denounced by labour, provides only for a cooling-off period, the right to strike and lock-out being restored to the parties at the end of that period. During major strikes, as for instance in the steel industry, there has been much public discussion in that country whether the State should not arm itself with power to prevent a work stoppage in industries vital to the economy of the nation. Though compulsory adjudication is still repugnant to American thought, the idea is gaining ground that something radical may have to be done if an occasion arises that might seriously threaten the national economy. Already there are compulsory adjudication laws in a number of States applicable to public utility services.

It may not be improper for a State to arm itself with emergency or special powers, including the power to refer disputes to compulsory adjudication, when such disputes threaten not merely to disrupt the economic life of the nation, but to bring it to serious jeopardy. Disputes which threaten a prolonged stoppage of work in public utilities, in atomic energy, in steel, etc., would obviously come under this category. Such an arrangement would not be deemed to be inconsistent with a general scheme of handling labour-management relations through mutual negotiations and collective bargaining.

It is against this background of a desirable form of industrial democracy that we must view the deficiencies of the labour-management relationship in India and consider how best and how soon to build up a healthy relationship which will play its full part in the growing industrialization of the country. In whatever we do, we cannot afford to weaken the foundations of democracy, which we have deliberately adopted as our way of life. Let us begin with a brief look at the state of organization of managements and unions separately. But before doing so, we must have an idea of the relative size of the problem that confronts us in the field of labour-management relations.

Relative Size of the Industrial Relations Problem: India is on the threshold of a vast industrial revolution. The Third Five Year Plan has come to an end in an atmosphere of all-round discontent and dismay, and the Fourth Plan is still (last quarter of 1966) under discussion though an *ad hoc* programme prepared for the first year of the Fourth Plan is already under implementation. Since the First Five Year Plan which related to the year 1950-51, all relevant factors have undergone substantial changes. The population increased from 361 millions in 1951 to 438 millions in 1961. The populations estimated for 1966 and 1971 are 492 and 555 millions. The draft of the Fourth Plan says that the increase in population has been 134 millions in 15 years. So the population in 1966, according to this estimate, must be 495 millions. The total investments, excluding current developmental expenditure, in the first three plan periods in both the public and private sectors have been calculated to be Rs. 3,360 crores, Rs. 6,750 crores and Rs. 10,400 crores respectively. Out of these investments industry proper, excluding power, transport, etc., but including minerals, accounted for Rs. 173 crores (public sector alone) in the First Plan, Rs. 1,545 crores (public and private sectors) in the Second Plan and Rs. 2,570 crores (public and private sectors) in the Third Plan. The index of industrial production increased from 100 in 1950-51 to 194 in 1960-61. Correspondingly the average daily employment in factories (submitting returns) rose from 2.91 million in 1951 to 3.92 million in 1961.

The draft of the Fourth Plan just released contains both interesting and disquieting revelations sandwiched between optimistic expectations. It says that the First Plan achieved "considerable success", that the Second Plan performance was "not unsatisfactory", and that the record of the Third Plan "had not *prima facie* been good". Over the Third Plan period the rate of growth of the national income was "less than half of the rate of five per cent per annum aimed at." The rates of increase of the national income in the first four years were 2.5 per cent, 1.7 per cent, 4.9 per cent and 7.6 per cent, but there was a decline by 4.2 per cent in the last year. The general price index rose by 36 per cent during the Third Plan period, the rise being much larger than the increase during the previous 10 years. Against a total actual investment of Rs. 10,400 crores in both the public and private sectors in the Third Plan, a total investment of Rs. 21,350 crores is proposed for the Fourth Plan, of which Rs. 13,600 crores will be in the public sector and Rs. 7,750 crores in the private sector. The total outlay including a current outlay of Rs. 2,400 crores will be Rs. 23,750 crores. The investment in industry and mining is expected to be Rs. 6,286 crores as against Rs. 2,570 crores in the Third Plan. The aim of the Fourth Plan is to achieve a rate of growth of 5.5 per cent per annum—a rate dubbed by certain critics as "fantastic and unachievable."

Each Plan has been substantially bigger than its predecessor. The investment in industry, which was comparatively small in the First Plan, has

gone up appreciably in the Second and Third Plans. The Fourth Plan outlay in industry is expected to be much more than double that of the Third Plan. Industrial production too has gone up and with it factory employment. But the population growth has upset all statistical calculations. A rate of growth which was assumed to be about 1.25 per cent in the First Plan period shot up to about 2.2 per cent in the Third Plan period. The draft of the Fourth Plan refers to the "massive increase" in population during the last 15 years at the overall rate of 2.5 per cent per annum. Consequently in spite of the additional employment provided by the Plans, the extent of employment has steadily been rising. The Third Five Year Plan mentions[1] that the backlog of unemployment at the end of the Second Plan was about 9 million. The addition to the labour force in the Third Plan is estimated at 17 million and the additional employment opportunities likely to be created at 14 million. Thus, according to the Plan, the unemployment would have increased from 9 million at the end of the Second Plan to 12 million at the end of the Third Plan. Besides, "under-employment in the sense of those who have some work but are willing to take up additional work cannot be precisely estimated, but is believed to be of the order of 15-18 million."[2] That is the estimate of the under-employed as in 1961. It must have gone up since then. Thus the total magnitude of the unemployment problem as in 1965-66 would be about 12 million unemployed and some 18 million under-employed, that is, a total of 30 million out of a total estimated population of 438 million in 1961 and 492 million in 1966. The draft of the Fourth Plan estimates the unemployment backlog at about 9 to 10 million at the end of the Third Plan and at about 14 million at the end of the Fourth Plan after balancing fresh employment opportunities against additional entrants into the labour force.

To assess the magnitude of the problems with which we, in the industrial relations field, are confronted, it might be as well to remember the rough proportion of industrial and agricultural labour. The organized industrial labour taking advantage of adjudications, agitations, strikes, and demonstrations in varying degrees is roughly some 10 million, made up of:

(1)	Factory workers	3.92 million (in 1961)
(2)	Plantation workers	1.27 million (in 1958)
(3)	Mining workers	0.62 million (in 1959)
(4)	Construction workers	2.00 million (in 1959)
(5)	Public utilities, transport and communications	2.20 million (in 1961)
		10.01 million

These are approximate figures but are enough to show that much of our labour

[1] *Third Five Year Plan*, 1961, p. 156. [2] *Ibid.*

policy and programmes affect, to a greater or less extent, only some 10 million "industrial" workers out of a total population of 492 million by 1966 as against a working force in the agricultural sector alone of over 102 million (1951 figure).[3] Even of the 10 million workers, construction and plantation workers, numbering over 3 million, take only limited advantage of labour laws, being concerned primarily with wages, bonus, leave and similar terms of service. About half the number of factory workers working in the large industrial centres of Bombay, Calcutta, Madras, etc., a portion of transport workers and some mining labour, numbering, say, in all some 3 to 4 million workers, constitute the spearhead of the labour agitation and carry away the large bulk of the fruits of agitation.

By contrast the problem of rural and agricultural labour is indeed very unsatisfactory and disturbing. Here are some figures taken from the Report on the Second Agricultural Labour Enquiry conducted in 1956-57. The mid-1957 population has been mentioned in the Report[4] as 392 million against 397 million estimated for 1955-56 in the Five Year Plan. 81 per cent of the entire population was rural population in 1957, the rate of urbanization over the decades being described as "painfully slow." The total agricultural population in 1951 was 240 million out of a total rural population of 295 million. Agricultural labourers and their dependants constituted 43 million in 1951. At the 1956-57 enquiry the number of rural households was estimated at 66.6 million and that of agricultural labour households at 16.3 million. The average size of an agricultural labour household was 4.4 and the number of wage earners per household 2.03 in 1956-57. Thus in 1956-57 the agricultural labour population was 71.72 million and the number of wage earners in that population 33 million. These figures will be relevant when we consider whether, and if so to what extent, we are in fact advancing social justice by continually giving more and more to some 3 to 4 million industrial workers when we have on hand some 12 million unemployed, 18 million underemployed, 33 million agricultural labour wage earners on a mere pittance (as has been shown elsewhere) and the bulk of over 200 million of cultivating classes eking out a livelihood in no way comparable to that of the industrial labour of the big cities.

Management's Outlook: British capital and enterprise found its way to India from the very beginning of the industrialization of India. India was then under British rule and consequently favoured the entry of British capital. British capital, in turn, found both security and scope in the vast and undeveloped sub-continent under the protection of the British flag. Starting with plantations of indigo and tea, British capital spread to railways, mines and industries proper. Before World War II, manufacturing capacity

[3] *Agricultural Labour in India—Report on the Second Enquiry*, 1961, p. 10.
[4] *Ibid.*, Chapter II.

was, however, concentrated in a few lines of production like cotton textiles, jute, and a few miscellaneous industries.

The managing agency system, working for a percentage of profits, has all along been the main form of management of industrial enterprises in India. The system first came into existence for the management of British capital, the shareholders and directors of which were in England. It caught on and spread to Indian capital in due course. In the early days of industrialization, the well-known managing agency houses did much good to Indian industry, procured capital and technical know-how, and enabled Indian industry to progress. But during the inter-war years, several abuses crept into the system. Many of the Indian firms were proprietorial concerns dominated by the relatives and friends of the proprietors. Much of industrial enterprise was, and perhaps still is, associated with certain prominent families. Key posts in many family concerns have long been monopolized by family members. It is only since Independence, and particularly after the agitation against the managing agency system started, that the more progressive managements have been recruiting more and more of professional managers. The large increase in the number of new companies, many with foreign collaboration, has also been responsible for increasing the number of companies with modern managements and outlook.

In his report to the Government of India, Professor Richardson, an I.L.O. expert, had this to say about the managing agency system: "It (managing agency) cannot, however, in certain vital respects, adequately meet the needs of the future. It is too centralized, autocratic and personal. Decisions even in matters of detail are dealt with by the agency or the top operating manager. Responsibility is not sufficiently decentralized and the intermediate and lower grades of management are given little scope. This becomes a vicious circle and often the personnel in the lower grades have neither the status nor the opportunity to show initiative and take responsibility." [5]

Lack of ethical standards on the part of some employers has brought a bad name to certain sections of Indian industry. Prime Minister Jawaharlal Nehru wrote of industrialists and businessmen in 1949: "If your demands come in the way of the good of the masses, your demands will be completely ignored. The industrialists and commercial classes in India have become unpopular because some people among them have not behaved rightly, have taken advantage of situations to obtain profit for themselves at an inordinate rate to the disadvantage of the community at large."

The company law reform culminating in the Companies Act, 1956, has done much to reduce the mismanagement of companies and the misbehaviour of persons in control of companies. Consciousness of modern management methods has, however, been slow to arrive. Even when intentions have changed, methods have not. The last five or ten years have witnessed many

[5] Prof. J. H. Richardson: *Report on Labour-Management Relations*, 1959, p. 47.

developments that are bound to have a lasting impact on managerial competence and outlook. These include the establishment of top quality management study institutes like the ones at Ahmedabad and Calcutta, the Administrative Staff College at Hyderabad, the introduction of business curricula in universities and the organization by various bodies of a large number of seminars, training classes, conferences and similar activities.

The picture of an average Indian industrial establishment is still one of domination by the members of the family which started the activity. The family members are often men of business acumen but are otherwise not burdened with any specialized knowledge of modern management methods. They often hire competent technical staff, including foreigners, to perfect the production of their products but they seldom appoint experts in management, personnel administration or human relations. The personnel officer, where he exists, is largely concerned with a few specific functions such as recruitment, disciplining, welfare, and settlement of disputes. There is seldom any cogent personnel policy or administration. The line officials, experts in their line, are completely at sea in regard to many labour problems—collective bargaining, grievance procedures, joint consultation, etc. They are unconcerned about labour problems until serious disputes threaten to stop the wheels of production. It is obviously not possible to improve labour-management relations to any appreciable extent or to encourage unions to adopt desirable ways in their handling of the labour-management relationship unless managements reform themselves and are motivated by progressive ideas. Managerial ranks have to be indoctrinated in such common concepts in the field of personnel administration as "that management is personnel administration", "that the need of winning the wholehearted cooperation of people is the central ever-present problem of management", and "that management is the development of people and not the direction of things." There is no use criticizing trade unions for their numerous defects and deficiencies if managements too have to answer for many drawbacks on their side. An urgent necessity of Indian industry is, therefore, to train its managerial and executive staff in modern management methods, including progressive personnel administration and human relations. This is not going to be an easy task. Top management must first be convinced of the need to impart such training. This is the biggest hurdle. If a company has done well in the past, it may see no reason at all to change its methods of management. If top management can be made to feel that better human relations in the undertaking mean better production and progress all round, the resistance at its level would break down. Contacts with liberal influences alone can bring about the desired change in the ultimate controllers of industry.

Convincing the senior and junior ranks of the managerial staff may be difficult but not impossible. It is here that the training and development facilities that are steadily growing in the country can be of real service to industry. It is only by such training that the average manager can be made

to realize that people in an organization can be motivated to contribute their best to achieve the organization's goals only with their unstinted cooperation and not through coercion.

It is the opinion of shrewd and competent foreign observers comparing the Indian scene with that in their own countries that the outlook of many Indian managements is still characterized by authoritarianism and paternalism. That may be so, for these were the very characteristics of the British administration of India until Independence, and it is commonplace that we take after our masters. Until a few decades ago there was no trade unionism in India worth the name, and in an industrial world devoid of trade unionism, both authoritarianism and paternalism were the natural consequences of the wielding of economic power by managements. All advanced countries have passed through this phase of development. The conditions peculiar to our country have made the transition somewhat prolonged. An almost inexhaustible supply of unskilled labour, the illiteracy of the working classes, lack of effective union leadership, and above all the traditional tendency of the Indian citizen to look up to the ruler for protection and wise leadership have contributed to the perpetuation of authoritarianism and paternalism in this country.

The fact, however, remains that it is in the business interests of the employer himself that a strong, independent, and responsible trade union movement should take root in India. A weak movement might enable the employer to do pretty much as he likes for a while, but it is only good industrial relations that can develop and bring out the full potentialities of the labour force and lead industry to new heights of production and profits. The winning over of the confidence of labour is a task of first importance to any progressive management.

For any training to be effective, the personnel to be trained must be good. Many sections of Indian management seriously suffer from the effects of nepotism. Relations and friends of the man at the top have, in many cases, managed to occupy all worth-while positions in industrial establishments. So long as they are competent, this will have no effect on the efficiency of the establishment, but many of them are not efficient. They exercise authority and shoulder responsibility without the requisite knowledge, training or competence. Such a company cannot really forge ahead. A policy of recruiting the best that the employment market can offer is obviously necessary for better management and better industrial relations.

The middle management categories, which are quite mature and have many years to go, will benefit most from training and opportunities for development. Post-graduate training for some and shorter refresher courses for others, supplemented by periodical seminars and conferences, will do much to develop these categories. Professional management associations are gradually coming into existence. They should be encouraged by all possible means. The trouble taken, and the expenditure incurred, in the develop-

ment of managerial ranks will more than justify themselves in the long run.

Apart from the development of managerial ranks, managements should pay more attention than in the past to the development of welfare measures for workers. This is an important aspect of industrial relations in a country like India where the worker cannot make alternative arrangements for many purposes on his own initiative. The Factories Act, the Mines Act, the Plantations Act and similar measures of legislation provide for a certain minimum standard of welfare measures that a whole industry can afford. This does not mean that the employer's responsibility ceases with the provision of those minimum welfare measures. There are certain welfare measures which, by their very nature, cannot be prescribed for all employers or in respect of all workers. Housing is one such. The record of achievement of the Central and State Governments in handling the problem of industrial housing is woefully inadequate. It is of no use threatening employers with a statutory liability for housing, which, on any reckoning, involves a financial burden far beyond the capacity of most industries. There will be results only if the problem is tackled on a realistic and cooperative basis with adequate incentives. With constantly increasing expenditure, comparatively stagnant or even declining profits (in the case of some units), and with ever-increasing levels of taxation, corporate as well as personal, employers can be excused if they show no great enthusiasm for the many housing schemes which emerge from Government's prolific theoretical planners, neatly tied up with red tape all round. Let, among other measures, a substantial portion or even the whole of the amounts now distributed as annual bonus be diverted to the construction of industrial housing, and the results cannot but be massive over a period of years. It is not necessary here to go into the details of this suggestion—namely whether the amount should be levied as a cess and spent on a public housing scheme or whether it should be permitted to be spent by the particular establishment for a housing scheme of its own. So long as the principle of utilizing bonus for housing is accepted, the precise mechanism is a matter for consultation with all concerned. At present the annual bonus is frittered away on unnecessary and undesirable spending. Its only effect is to add to inflation without really benefiting anybody, least the workers themselves. It is well-known that the proportion of workers who put the annual bonus to good account is extremely small; socio-economic investigators will readily admit that the level of indebtedness is ever on the ascendant. A considerable number of workers lay out their annual bonus on drinking, gambling, and similar harmful and ephemeral excitements. The recently-issued (31 May 1965) Ordinance on bonus, which provides for a minimum bonus equal to 4 per cent of the total of basic wages and dearness allowance, regardless of profits, and which is claimed by Governmental spokesmen to put many more crores of rupees into the pockets of many more millions of workers, will be warmly acclaimed by the business interests which traditionally help workers to unburden themselves of their annual windfall. If bonus must be given at

all, a substantial portion of it, in any case the minimum of 4 per cent, should be diverted to housing. If this is done, much of the employer opposition might wear away. Workers are the beneficiaries of any industrial scheme. It is for them to contribute to their utmost capacity to bring about a benefit which is so important to their welfare. If they are far-sighted enough to agree to such a proposal, the large majority of employers would presumably be prepared to shoulder their share of the burden promptly and cheerfully. Much can be done to encourage housing through taxation relief. It is now widely recognized that reduction of high rates of taxation to reasonable levels has the effect of increasing the yield from taxation. A reduction in the rates of taxation may be justified for this purpose alone. It will also encourage increased investment in industry, and it should not be beyond the ingenuity of our taxation experts to devise a system that will encourage added expenditure on industrial housing.

There are aspects of the housing problem, other than purely financial, which act as deterrents to the large-scale construction of industrial houses. These relate largely to matters of discipline. Housing colonies are becoming centres of worker resistance against the employer. In times of labour troubles, they become the headquarters of much anti-employer propaganda and activity. This view, will, of course, be denied, but in matters like this it is better not to ignore the employer's point of view if he is expected to act in a certain way. While housing colonies should be open to union leaders, no meetings should be held within the colony premises. Moreover a reasonable measure of discipline should be maintained in housing colonies. The vacation of quarters by dismissed employees or those who have ceased to be employees is the cause of many a serious dispute. A dismissed worker staying on in the company quarters is about the most troublesome person that the management will ever have to reckon with. It would be in the interests of all to ensure that discipline is maintained in housing colonies and that employers do not encounter serious difficulties in administering such colonies.

While housing is an important welfare measure which remains to be tackled effectively by management, labour and Government, there are other welfare measures which should be supported to a much greater extent than at present by employers. Good and cheap canteens, ample bathing facilities, comfortable rest rooms, reading rooms, libraries, facilities for sports and similar welfare measures cannot but improve the worker's efficiency. Many employers have in the past voluntarily provided excellent welfare measures, but it is to be feared that with increasing difficulties with unions and in the absence of adequate support from Government, managements have slowed down the tempo of welfare measures. If paternalism was responsible for much welfare in the past, the atmosphere of challenge by unions and of compulsion by the State in the form of numerous statutory requirements in the field of welfare has effectively discouraged the employer from pursuing his more generous impulses in regard to welfare. Many employers have begun to feel that the

Central and State Governments generally side with workers in most situations and that it is comparatively useless to look to them for effective support against indiscipline and undesirable union activities. The employer's discretion in many matters has steadily been taken away. He cannot retrench a single worker, regardless of the justification, without making a major issue of it. If he voluntarily starts an incentive bonus scheme with a view to increasing productivity, he may soon find himself compelled to extend it and to revise it on lines he could never have bargained for. If he starts a subsidized bus service, he can never hope to discontinue it. A concession, once given, becomes a right which can never be withdrawn. It is the experience of very progressive employers who have tried to look far ahead of the times that the more an employer voluntarily does, the more he will be compelled to do. In these circumstances many employers consider it the safest policy to do the bare minimum in the field of welfare.

The unsatisfactory state of industrial relations now obtaining in the country cannot be materially altered unless all three parties concerned, namely, management, labour and Government, decide to do something radically different from what they have been doing in the past. The employers have great stakes in bringing about a transformation for the better, and they can, therefore, be relied upon to realize the dangers of sticking to the old ways. Undesirable business practices will have to be given up. If top management is sincerely anxious to secure the steady progress of the undertaking, it must bid good-bye to nepotism and appoint competent professional personnel who will be able to cope with the growing complexities of modern industry. The personal one-man show of the Founder's descendant must give place to a scientific system of decentralized management. In a large and growing establishment nothing can be so constricting as the rule that the one man at the top must, and nobody else can, take decisions on the smallest matter arising within the establishment. The owner-manager must decide to allow his senior paid employees to commit mistakes. There must, therefore, be a new determination on the part of employers to reform themselves.

Let us assume then that employers, or at any rate the large majority of them anxious to build up their industries, will, in their own self-interest, ensure modern management of their undertakings and do everything possible to maintain good human relations with their employees. It may take time to raise management standards and to modernize management methods, but since good management is demonstrably good business, the inevitable reform is bound to come sooner or later. It is heartening to see that the change has already made a good start in recent years. The proportion of professional management will steadily increase. Substantial changes in the structure of management may be expected within the next two or three decades.

Given responsible behaviour on the part of managements, the building up of sound labour-management relations is dependent on the other two factors,

namely, the existence of a sound and business-like trade union movement and the choice of a proper system of labour-management relationship. To these we must now direct our attention.

Trade Union Problems—the "Outsider": Of all the problems that have weighed down the trade union movement, none calls for greater attention than the "outsider" problem. Enough has been said of it in the chapter dealing with the present state of trade unionism. It has there been pointed out that the "outsider" got statutory recognition for the first time in the Indian Trade Unions Act, 1926, that the avowed object of introducing outsiders in the executives of unions was to train up workers in trade union methods and meanwhile to protect them against exploitation and victimization by employers, that the gradual elimination of outsiders purports to have been the goal from the very beginning, that suggestions have been made from time to time for the reduction of the number of outsiders on executives, that far from their number going down the overall strength of outsiders in the trade union movement has increased owing to the rapid growth of the movement, and that the justification now claimed for the retention of outsiders is precisely the same as that which was claimed in 1920 when the All India Trade Union Congress was formed or again in 1926 when the Indian Trade Unions Act was enacted. The outsider problem is today where it was 40 years ago if it has not, in fact, become worse.

Let us see how this problem has been viewed by contemporary observers and experts. Commending a programme of training of workers in trade union methods, the *Free Press Journal*, which cannot be suspected of any undue affection for the employer classes, said in an editorial on 1 April 1961 about the outsider leadership: "The uneducated worker has been discouraged from assuming leadership at any level and the professional politician has been permitted to retain it. Neither politics nor trade unionism has benefited in the bargain. On the contrary both have been harmed. But the worst part of it all is that our entrenched leaders, who are in the best position to arrest the pernicious tendency and divert trade unionism along constructive lines, are themselves exploiting the situation." The Bombay Labour Minister's exhortations in regard to worker education, the paper claimed, "had a hollow ring. The Congress as the one party that holds executive authority in the country, has the power to resurrect Indian trade unionism from its present ugly mess. And yet what has the Congress done? It merely set up its own all-India trade union wing whose leaders naturally owe their first allegiance not to the workers they are supposed to lead but to the party they are expected to safeguard. This subordination of union interests to party interests is a relic of political primitivism and the Congress must shoulder the major share of the responsibility for its continuance. At the executive level in the Government, our leaders quite overtly play one union against another through such weapons as recognition and patronage. Worse, some of our leaders are

quite plainly in favour of big business as against healthy trade unionism—a fact which completes the tragedy of our trade union movement. It is up to leaders to take action to end this tragedy and give a sounder basis to trade unionism in the country."

The *Free Press Journal,* which, as we have said, is by no means an admirer of big business, and big business, represented by the Employers' Federation of India, are strangely enough in complete agreement on at least one point, namely, that the politicians leading the trade union movement have landed it in a sorry mess with no intention of rescuing it and setting it on its true path as that would be the end of their own career as labour and political leaders.

After the unsuccessful strike by Central Government employees in July 1960, the Government of India decided to ban outsiders from unions of Government employees. Government also announced its intention to ban strikes by its employees. The Central Labour Minister observed at the 18th Indian Labour Conference that the exclusion of outsiders from associations of Government employees was justified by the fact that the proposed arrangements for joint consultation and compulsory arbitration would place the unions of Government employees in a special position. In these circumstances strikes would automatically become superfluous and the right to strike would become "academic or illusory." "In order to ensure that no anti-social elements might be able to exploit the public servants", the Labour Minister added, "the Government intends to take away by law even this academic or illusory right." This is an admission on the part of Government that so long as unions found it possible to seek appropriate remedies, there would be nothing wrong in excluding outsiders from unions or even in banning strikes. Having gone to the extent of deciding to ban outsiders from unions of Government employees, the Labour Minister had to say something about outsiders in unions of non-government employees. An ardent advocate of voluntary codes, he expressed himself in favour of setting up a Code of Conduct for outsiders in trade unions, but in the very nature of things, this was not a feasible proposition.

An economist (S. B. Sarkar) writing in the *Amrita Bazar Patrika* at about that time suggested that "adequate restriction on activities rather than complete exclusion should be the correct line of action until the workers themselves are mature enough to assume full responsibility of leadership and organisation."[6] The same writer went on to observe "that even if it is feasible to eliminate outsiders from the field of trade union leadership in the years ahead, trade unions' involvement in politics could hardly be ruled out so long as the principle of collective bargaining constitutes the keynote of modern unionism." The use of political means by trade unions to further their economic interests is well known. No objection can possibly be taken

[6] *Amrita Bazar Patrika,* Calcutta, 2-11-1960.

to it. What is objectionable is the subversion of the trade union movement by politicians for their own selfish ends. The elimination of the outsider is a problem wholly distinct from that of trade unions' involvement in politics.

An ex-Secretary of I.N.T.U.C. writing in the *Nagpur Times* in September 1960 emphatically pleaded for the exclusion of outsiders from trade union leadership. He wrote: "I.N.T.U.C. leaders, from the very beginning to this day, are in the pockets of capitalists and the Government. Therefore they could not raise the pay and salaries of the labour and other white-collar employees. Outsiders are mainly interested in power."[7] The writer may have fallen out with the I.N.T.U.C., but his observations have all the sincerity of a confession.

The Madras Finance Minister, presiding over the third anniversary of the State Electricity Board Staff Union, said: "The main defect with our trade unions is that they are wings of political parties and unless this state of affairs is ended, there is no future for the trade union movement in India."[8]

A survey made in 1960 of trade union leadership in Bombay showed[9] that the vast majority of union leaders were outsiders and that "empire-building" was very much in evidence. One leader was president of 17 unions and secretary of two more. Another was an office-bearer of 20 unions. According to a report in *Indian Finance,* the President of the recognized union in Tata Iron and Steel Company was president of 30 or more unions.

The Vice-President of I.N.T.U.C. made certain pertinent observations on the outsider problem in August 1960, that is, soon after the strike of Central Government employees and in the context of the Government's decision to prohibit outsiders from holding office in unions of Government employees. His views, publicized[10] by a large news agency, started with the query whether outside leadership of unions was so dangerous that it had to be tabooed. He said that the answer was both "yes" and "no". It was dangerous, he said, when the leadership was bad, that is, irresponsible, ignorant, interested, and unpatriotic, but good and positively helpful when the leadership was good, that is, responsible, enlightened, dedicated and patriotic. The same test would apply to insiders also. He admitted that outside leadership had not always been good. He said: "Often they have been connected with party politics. For most of them the interest of the workers is secondary. Their first love is politics. They come with ulterior motives. Hence outside leadership becomes suspect as a second source of exploitation, the first always being the employer." In his opinion a legal ban would drive out the good outside leadership while still permitting the undesirable leaders to manoeuvre and gain control through insiders planted by them in positions of influence.

One might agree with much of what the Vice-President said about good and bad outsiders. It is obvious that many of the early outsider leaders of

[7] *Nagpur Times*, Nagpur, 6-9-1960.
[8] *The Mail*, Madras, 24-7-1960.
[9] *The Pioneer*, Lucknow, 9-6-1960.
[10] *Ibid.*, 28-8-1960.

the trade union movement belonged to the category of "good" leaders, for how could it be otherwise when the trade union movement had the good fortune to be served and guided by such towering personalities as Mahatma Gandhi, Jawaharlal Nehru, Vallabhbhai Patel, Lala Lajpat Rai, N. M. Joshi, V. V. Giri, and others of similar stature? But unfortunately Independence has had a lot to do with the calibre and integrity of the outsiders who have been entering the trade union movement in recent times. Before Independence the trade union field was largely a field of dedicated service with little expectations of any return or reward in the form of remuneration, patronage, or prestige. Those who entered the field, like their comrades in the political field, were largely actuated by high ideals and motives of disinterested service. Independence threw open the flood-gates of opportunism and patronage to all who managed to get into the political arena either directly or through the trade union movement. Many other changes also took place. Employers who did not take any serious notice of trade union leaders during the days of the British suddenly found themselves confronted by the very same leaders occupying ministerial ranks. So they had to become more responsive to the influence of union leaders, particularly those who had a direct pull with ministers. With the rapid increase in industrialization the number of industrial establishments and the strength of labour increased appreciably, thereby greatly enlarging the happy hunting-ground for many an unscrupulous professional trade union leader. The ratio of bad outside leaders to good outside leaders greatly increased after Independence. The evil effects of the many bad leaders have swamped the beneficial effects of the few good ones. It is the relative proportion of good and bad that has brought a consistently bad name to outside leadership in recent times.

The Vice-President's fear that undesirable leaders will not be deterred by a legal ban and that they will continue to operate through inside agents is largely unfounded. If outsiders are banned from unions, they will not be allowed to negotiate with employers, to act as union representatives before governmental authorities, or to take part in bi-partite and tri-partite conferences and committees. If insiders get opportunities to do all this, they will have no illusions as to the utility of outsiders. As mere background advisers, evil geniuses cannot thrive too long. They will not be able to sustain the myth of their alleged indispensability except in the limelight of events. The only way to exclude the large proportion of bad outside leadership is, therefore, to exclude the whole of that leadership, though this might mean depriving the trade union movement of the guidance of a few good leaders.

Some would, no doubt, argue that instead of banning outside leadership, which they point out can only be of doubtful effect, one should concentrate on striking at the conditions which perpetuate outside leadership. There can, of course, be no two opinions about the latter; the State and the trade union movement itself should take all possible steps to remove the conditions

which necessitate outside leadership. The various education programmes, particularly the programmes of training in trade union principles and methods undertaken by the Workers' Education Board since 1958 are among the more important of such steps. But if we do nothing more and wait until the newly-trained members of unions muster strength and courage sufficient to elbow out the outsiders, we would have to wait far too long. The State must lend a helping hand to the insiders who are coming up, and such help, we feel, should take the form of a gradual ban on outside leadership such as is advocated in these pages.

After such a clear elucidation of the attributes of good and bad leadership, the Vice-President started confusing the issue by referring to "another anomaly", namely, that "if the mere fact whether a person is employed or not in an undertaking at a particular point of time is going to decide his status as an insider or outsider, this would lead to dangerous results." He went on to say: "Suppose the president of a trade union is an employee and he is removed from service by his employer for some reason or for no reason at all. Immediately he becomes an outsider, and the union members are also obliged to remove him from office." The controversy over the outsider issue has never raged over any demand by employers or anybody else that the individual should be currently employed in the undertaking. As the Vice-President rightly says, modern trade unionism calls for specialists and full-timers, regardless of whether we classify trade unionism as a "regular science"—as he would have us believe—or as an art. The image of the outsider in the public mind is that of a person who does not belong to the class of labour, has never worked as a workman, has not undergone the sufferings and privations of the worker class, is unable to project himself into the role of a workman, whose ambition hankers after political office or material wealth, whose only reason for taking to the trade union field is his belief that he can thereby achieve his ambition and who, nevertheless, tries to make a martyr of himself by posing to be the one and only true advocate of the suffering mass of workers.

In the context of our advocacy of the imposition of a legal ban on the presence of "outsiders" in unions, in particular as office-bearers, which might sound unnecessary or even ill-advised to some, it is worth while quoting the opinion of Mr. David Morse, Director General of the I.L.O.:

"The trade union movements of many Asian countries, and some in Latin America and Africa, could never have achieved their present status without the assistance of 'outsiders', intellectuals, politicians, lawyers and other persons inspired by varying motives, who are not and *never have been workers* in the economic sector covered by the trade union. Their assistance is indispensable to the trade union movement, especially in the initial stages, when very widespread illiteracy among the workers makes it difficult to recruit qualified leaders from their ranks . . . . The predominance of

outsiders in union leadership *has, however, created difficulties.* Outside leaders who secured their position for political purposes have been responsible for much harmful inter-union rivalry, sometimes sacrificing the workers' interests to those of the party to which they belong. Another type of leader *can do still more damage,* namely the one who is in the movement for his own personal ends and who takes advantage of the workers' unfamiliarity with trade unionism and industrial relations. This question of outsiders has been the subject of controversy in several Asian countries .... In some countries of Africa, Asia and Latin America the law now provides that *all* or a fixed proportion of trade union officers must belong to the occupation with which the trade union is concerned. Some care is needed in ensuring that the principle of freedom of association is not compromised through such measures, for example by making it possible for the dismissal of a trade union leader from his job to deprive him of his right to hold office, thereby restricting the freedom of the union to elect its own leaders, and possibly encouraging interference in union leadership by employers."[11]

As the Director General has rightly pointed out, the outside leadership has been responsible for two serious afflictions of the trade union movement in India. First, it has introduced into the movement several unscrupulous adventurers and exploiters who fatten on the opportunities afforded by trade union work, misappropriate much of the special funds collected out of bonus payments and similar bulk windfalls, and at times force employers to purchase peace by making heavy payments to them. These people manage to keep the actual workers as far away from the scene of labour-management relations as possible. It is they who are the loudest in their denunciations of what they allege to be attempts by Government to deprive the workers of their Freedom of Association—of their right to be represented by whomsoever they like, outsiders or insiders. Secondly, the outsider problem is linked with the subordination of the trade union movement to the political movement. Each of the central organizations of labour is a wing, or at any rate a close associate, of an important political party and is used by that party for its political purposes. The Congress Party does propaganda through the I.N.T.U.C. for planning and similar measures which would keep the Party Government in power. The Communist Party carries on its propaganda through the A.I.T.U.C. and involves the latter in many political agitations calculated to strengthen its own position and its political doctrines. The risk is not that trade unions take part in political activities like legislation beneficial to them but that they allow themselves to be made pawns in the political games indulged in by their parent political parties.

[11] I.L.O.: *Report of the Director General, Labour Relations,* 1961, p. 88. (Italics supplied.)

Both these undesirable consequences arising from the intrusion of outsiders into trade unionism must effectively kill trade unions if by the latter term we mean bodies meant to look after the economic and social interests of their members. Of all the evils afflicting the trade union movement, that of outsiders is the greatest. So the first reform we would suggest is the enactment of legislation to ban outsiders from the executives of unions. As already mentioned, this can be no more objectionable from the point of view of the relevant I.L.O. Convention than the restriction, already legalized, on the number of outsiders on executives. Since the prominent leaders of the trade union movement are all outsiders, it is only to be expected that their assent to this proposal may not be forthcoming. It is, therefore, for the Government to decide whether this is a necessary and overdue reform and if so, to canvass support for the contemplated legislation. The legal abolition of outsiders on executives may be achieved in two stages. For the first five years, not more than two outsiders in unions with a membership under 2,500 and not more than four outsiders in larger unions may be permitted. In the second five-year period the number of outsiders may be halved. At the end of ten years, there should be no outsider on any executive. Our definition of "outsider" will not include anybody who has actually worked in any industrial undertaking or in any other kind of establishment to which the union relates for a period of not less than five years. The person selected for a post of office-bearer need not currently be an employee so long as he fulfils the five-year qualification. In the interests of the building up of whole-time office-bearers, it would be an advantage for the selected employee to relinquish his employee status and to be employed whole-time by the union. It should easily be possible to abolish outsiders in unions in ten years. Unlike past decades, the first decade of planning has led to a large increase in the number of literate, and even educated, persons in industry. In an establishment with a strength of several hundred workers, the number of educated persons among workers will be quite large. Unions will, therefore, have a wide choice from which to make their selections of leaders. The next decade will have an even greater impact on the standard of literacy of the labour force. Simultaneously the workers' education programme started by the Central Government in 1958 has already made much headway and trained a large number of workers in trade union methods, ideals and organization. The number of workers trained at various levels in trade union matters will be much more in the next ten years. Given the incentive, many workers will specialize in trade unionism to a degree which will make them wholly fit to take over the duties of office-bearers of unions. That incentive will be forthcoming if they know for certain that the last outsider office-bearer will leave in ten years from now.

To those propagandists and pessimists who plead for the retention of outsiders on the ground that industrial workers are incapable of looking after themselves and that they run the risk of victimization at the hands of unsympathetic and unscrupulous employers, we would merely say that such

and similar were the arguments that used to be put forward against the grant of independence to India beginning with that classical accusation that "not a rupee nor a virgin" would be left behind in India on the withdrawal of the British. Our leaders took up the challenge and decided that they were fit to shoulder the responsibility. They did so not because they felt that they were immediately well-equipped for shouldering the responsibility but because they knew that there was no other way of becoming fit for responsibility than by shouldering it. If such a large risk could be taken in so big a matter, the risk involved in the withdrawal of outsiders from trade union executives after the prolonged preparation and transition we have in view must be negligible.

Consolidation of Unions: While the exclusion of outsiders from unions requires the active intervention and support of the Government, there are various other deficiencies of the trade union movement, for the removal of which the primary responsibility must rest with trade unions themselves, though even here Government can give much encouragement and assistance. One such is the urgent need to arrest the growing tendency to proliferation of unions and to consolidate the movement. Mention has been made in the chapter describing the present state of trade unionism of how the number of trade unions has increased disproportionately to the increase in membership and how, in consequence, the average membership and the average income of a union have steadily gone down in an era of rising costs and rising wages. The reasons for proliferation are two-fold. First, the field of trade union leadership is open to any outside adventurer who thinks he can gain a foothold and forge ahead. This is the problem of the outsider already discussed above. Secondly, the absence of a law regulating representation and the certification of the bargaining agent or the recognized union and the pressure exerted by the authorities on employers to deal with minority or unrecognized unions have made a farce of the process of recognition. This problem will be discussed later on in connection with the arrangements necessary for improving labour-management relations, but its repercussions may be noted here. The union "recognized" under present-day Indian conditions is invariably a minority union which cannot deliver the goods. The rival union, generally also a minority union, makes enough noise and confusion and canvasses enough support from governmental authorities to make the employer feel compelled to deal with it even though it is unrecognized. Whichever union has, for the time being, the greater power of provocation gets the ears of the authorities, regardless of whether it is recognized or unrecognized. If a minority union can, through tactical manipulation, come into prominence and power, the multiplication of unions will go on unimpeded. After all, the Indian Trade Unions Act requires only seven signatures for the registration of a trade union, and when the trade union gets itself registered, its growth and prominence are matters of prestige for the leader who has brought it into existence.

The creation of a large number of small unions is bad not only for the unions themselves but for the movement as a whole. It leads to the dissipation of the small funds available to the movement. Were the funds concentrated in the hands of a few big unions, their capacity to produce results would be infinitely more. Moreover small unions—mostly minority unions—are ineffective in their dealings with employers. Nobody takes them seriously, and since they produce no results worth the name, even the members of the unions lose faith in the movement. Thus the labour spent in organizing such unions and the funds collected are in fact wasted and lost to the movement.

The only way to prevent the creation of small unions is for the Government and the employer to refuse to give any official encouragement to such unions. This is intimately connected with the recognition of majority representative unions. If provision is made for such recognition or certification, all except recognized unions should get no hearing at all anywhere. Neither the employer nor governmental authorities should agree to deal with them. The very small ones will go out of existence. The comparatively bigger ones will have to build themselves up to majority status if they wish to challenge the certified bargaining agent or the recognized union in accordance with the procedure that will be laid down. It is imperative that very small unions should amalgamate with one another and become bigger or disappear altogether. If there are any legal difficulties in the matter of amalgamation, these should be removed through necessary legislation even as the United Kingdom faced such a situation by enacting the Trade Union Amalgamation Act in 1917. Both in the United Kingdom and in the United States powerful national unions came into existence largely by the amalgamation of a number of existing unions. In the United Kingdom considerable difficulty was felt in amalgamating unions because of the requirements of the constitutions of the individual unions relating to the percentage of votes that must be received before an amalgamation can be authorized. Under the 1917 Act the requirement for amalgamation was reduced to a majority of 20 per cent on a vote of not less than half the total membership. As a result, the number of trade unions steadily declined from 1,302 in 1900 to 704 in 1951 in spite of greater unionization. Many of the national unions in the United States too were formed by the amalgamation of existing unions. Local organizations deciding to form a national union surrendered much of their autonomy and independence and agreed to abide by the regulations prescribed by the national union. In the United States there have been proposals, from time to time, for the break-up of some of the powerful national unions. The influential Labor Study Group set up by the Committee for Economic Development has disapproved of proposals to break up national unions, remarking that union organization generally followed the growth of markets and that as national markets emerged, it was inevitable that labour should seek to establish unions having a corresponding coverage.

Structure of Unions: If it becomes part of the labour policy of Government to discourage the proliferation of unions and to encourage their amalgamation and consolidation, the structure of unions will become important. It is of advantage to have big and powerful unions, for they alone will be able to command the resources necessary to maintain research departments and professional experts, to establish influential contacts with employers and governmental agencies, to establish a high level of responsibility both in undertaking collective bargaining and in upholding the consequences of collective bargaining and in general to behave like responsible and high-level agencies in the development of our economic system. The question of the structure of unions has been dealt with at length in an earlier chapter. There the strength of trade unions both in U.K. and in the U.S.A. has been traced to powerful national and international unions. The role of central organizations of labour such as the A.F.L.-C.I.O. in the U.S.A. and the Trades Union Congress in the U.K. has been identified as one largely of securing the enactment of beneficial labour legislation, of ensuring the legal status of trade unions, of influencing public opinion in favour of organized labour, of representing its membership in international affairs, etc. The autonomy of national and international unions is zealously guarded against encroachment by the central organizations. As national unions in these countries are large and financially strong, they are able to wield a considerable amount of power and influence in industrial relations. In contrast, it was pointed out that in India there were no national unions, that the large majority of unions had been organized on a unit-wise basis, that there were few instances even of unions covering an entire industry in a town or local area, and that the loose federations of unions occasionally met with in some industries were weak and ineffective.

Indian trade unions too can gain in strength and stature only by the formation of large and powerful unions, which, from the point of view of organization, will obviously have to be national unions serving the whole or much of the particular industry concerned. It is futile to look to one central organization of labour like the I.N.T.U.C. or the A.I.T.U.C. to solve the day to day problems, including control over collective bargaining, strikes and the like, arising in a large number of industries throughout the country. It is equally wrong to leave these vital matters to small local unions which will have neither the resources nor the organizational facilities for bargaining effectively with large employers. Necessarily, therefore, the most effective and convenient form of organization is the national union for the particular industry, trade or employment throughout the country. Each national union must have a strong central office controlled by whole-time paid office-bearers, officers, and experts. To the extent finances permit it should build up relevant statistics and undertake studies with a view to making collective bargaining more meaningful and effective than it is today. It should develop a body of expert bargainers whose services will be used for undertaking all important

negotiations. Since a national union located at a central place cannot possibly look after all local problems arising in each unit, it must necessarily have branches of members belonging to a single unit or a number of units in a compact local area. Where there are a number of branches in a city or other local area, there may have to be a local coordinating body in the form of a district committee. So long as the necessity of having branches is recognized, the precise details of local administration are matters for each union to decide. The division of responsibility between the national union and its branches is again a matter for each union to settle. Broadly speaking, the national union should have control over all important collective bargaining, the decision to call, and to call off, strikes, and in general matters which will have wide repercussions over the entire industry. It is also for the national union to decide what the entrance fee or subscriptions should be, what proportion of the funds may be retained by branches and what remitted to the national, whether any special levies should be authorized, and similar matters affecting union funds. The responsibility for bargaining will also have to be shared between the national and its branches. There will be a number of small matters pertaining to each branch, the responsibility for negotiating which could appropriately be entrusted to branches.

While the development of national unions should be the ultimate objective of the trade union movement and the movement must steadily work towards that goal, it is not suggested that this could be achieved overnight. First of all, the full cooperation of the central organizations, namely, the I.N.T.U.C., A.I.T.U.C., H.M.S., and U.T.U.C., will be necessary. They must realize and accept the position that in the interests of the development of strong national unions, they must agree to a limitation and redefinition of their own responsibilities and spheres of action. With the existence of strong national unions, the central organizations should not be concerned with collective bargaining, the settlement of disputes and the calling of strikes. Their sphere of action will largely be legislative, political, promotional, and defensive. For the general tri-partite conferences called by Government, they should provide a certain proportion of the representatives, the balance being provided by important national unions. For purely industrial tri-partite committees, the national union concerned should provide all or most of the representatives.

The argument can, no doubt, be urged in support of the existing practice that a central organization of labour, speaking for the entire labour movement, can, if it so desires, secure a national policy on incomes or uniformity in the other terms and conditions of service throughout the whole, or much, of the industrial sector of the economy, which a number of national unions, working disjointedly, cannot. The exclusion of a central organization of labour from this kind of activity, it is sometimes claimed, cannot be in the interests of the workers or of the economy as a whole. Apart from the fact that there is no one central organization of labour to speak for the whole of labour and that there are four central organizations which can seldom agree on any

common approach to the more vital issues, it is obvious that in a vast country like India, over-centralization of union responsibility and authority cannot work well in practice. No central organization with constituent unions spread all over the country can undertake the responsibility for detailed collective bargaining. Over-centralization must sap all local initiative, lead to inordinate delays in the settlement of claims and disputes, and result in superficial and spasmodic activity. Moreover, under Indian conditions such national policies as are evolved as part of the Five Year Plans—and it is our contention that policy in the labour field has been deficient and indecisive—are in fact evolved by Government after elaborate consultation with all concerned parties. The central organizations have been taking, and should continue to take, interest in such policy-making but this function can be separated from that of detailed collective bargaining. In some countries collective bargaining may be the principal means to evolve overall policy in regard to important questions, but that is not so in India. The Five Year Plans contain practically all the policies that the country can hope to implement and collective bargaining has only a secondary role to play in this respect. In the field of planning the central organizations have a large part to play. This should be one of their more important responsibilities.

It should be realized that even with the cooperation of the central organizations of labour the bringing into existence of national unions may take time. But by the process of steady amalgamation of the unions in the industry affiliated to the same central organization, first in the same city or local area and then in steadily-growing larger areas, it should be possible to build up truly national unions within a reasonable time. When a national union is formed, the erstwhile separate unions will become branches of the national union.

Trade Union Funds: Enough has been said elsewhere to show that the large majority of trade unions have no funds worth the name, that they cannot even pay for clerical assistance, and that there is no question of their being able to employ whole-time office-bearers or technical experts to assist them in undertaking studies or in negotiating with employers. The political pull of the outsider leader and his oratorical prowess to inspire confidence in the illiterate members are the main resources of most unions. Subscription rates are very low; often subscriptions are not collected for fear of losing membership. Special donations and levies collected on the occasion of lump disbursements provide the leader with the necessary financial backing. Since there is no paid accountant, the accounts are sketchy. Often special levies are made at the gates of factories by hefty and impressive volunteers, and as workers going out are more anxious to get away with the minimum damage than to avoid payment, the formalities of giving and taking receipts are reduced to the minimum. No strong and self-respecting union can make progress on the strength of such uncertain resources. While special levies at prescribed

rates for well-defined purposes cannot altogether be ruled out, excessive dependence on donations as the main source of revenue should be given up. The main argument against the fixation of reasonable subscription rates is that the Indian worker is poorly paid and cannot afford to pay anything but a nominal fee. This is an old-time argument which cannot be accepted at the present time. Anyone familiar with conditions in industrial areas will readily admit that cinema houses charging substantial rates are always full, with workers constituting the majority of the audience. In wet areas workers spend much money on liquor. When the worker is accustomed to such high rates of expenditure on non-essentials, he cannot have a legitimate complaint if he is asked to pay a reasonable fee for supporting his union. If he resists payment, it is obvious that the union leaders have made a poor show of selling the idea of trade unionism. If he makes reasonable payment, he will also expect a reasonable return. Naturally leaders will have to be more alert and will have to put in more solid work than they do at present. They will have to attend to his genuine grievances and secure redress. Since this will mean hard trade union work, it may no longer be possible for a trade union leader to work as the office-bearer of some 20 unions—as some do at present. If subscription rates are fixed at say one to two per cent or, in special cases, even more of the earnings, this cannot be considered a hardship. It is necessary for trade unions both to increase their size and to impose much higher subscription rates than are prevalent at present. There is no other way to build up a strong and healthy trade union movement.

Politics and Rival Unionism: Enough has been said earlier to show that while in other countries trade unions may make use of political methods for achieving their economic goals, unions in India are so much under the thumb of political parties that they become veritable pawns in the political game. The I.N.T.U.C. is the creation of the ruling party, namely, the Indian National Congress, and actively supports Government's policies in regard to planning, wage restraints (when this is asked for), rationalization, prevention of strikes, productivity drives, etc. Even when it disagrees with Government's actions, it indulges in nothing more than a mere verbal protest. It does not believe in embarrassing the Central or State Governments, regardless of the provocation. It would be difficult to imagine a truly independent central organization of labour being so solicitous of Government's policies and actions, and consequently it is not surprising to hear opponents dubbing the organization as a pocket borough of Government.

The A.I.T.U.C., in turn, is a faithful representative of its political boss, the Communist Party of India. It draws its political and economic inspiration from party mandates. It feels perfectly free to make the demand that the State shall coerce employers but that such coercion cannot be directed against labour (vide proceedings of the Indian Labour Conference, Nainital). The A.I.T.U.C. feels free to join hands with various political organizations in

staging demonstrations and strikes on matters which have to be tackled more on the political front than on the economic side. The general impression prevalent amongst the public is that just as during the British days the Congress Party utilized the trade union movement as the spearhead of political agitation, the Communist Party now uses the A.I.T.U.C. and the unions affiliated to it as the main vehicle for the propagation of communist ideals and as its main agent for supporting field operations.

Apart from the fact that trade unions are thus forced to divert their attention from economic issues to political issues to the detriment of true trade union activity, the identification of trade union interests with political activities immediately leads to the creation of rival unionism. Rival unions spring up not because the labour situation justifies it but because the balance of power between the political parties requires the setting up of their brands of trade unions in the field.

Since it is not differences in trade union objectives that have brought about rival unionism, rivalry produces particularly distressing situations. A union starts a strike and undertakes a determined campaign. The rival comes along, denounces the strike, negotiates with the employer, enters into an agreement, and starts breaking the strike. Elsewhere a recognized union enters into an agreement with the employer. The rival union comes along, denounces the agreement, calls the other union a company union and stirs the workers to a strike. These incidents have occurred so often that they cannot be deemed to be stray happenings.

It is idle to pretend or suggest that it would be easy to break the link between the trade union movement and the political movement, but it is up to Government and the growing number of inside leaders to make a determined attempt to liberate trade unions from the oppressive control of political parties. If strong national unions are built up over a period of years, it is quite possible that they may play a role quite different from that of the existing central organizations of labour. All that can be said here is that the domination of the trade union movement by political parties is doing irreparable harm to the former and that the building up of strong national unions, which will refuse to be bound hand and foot by political parties, is necessary for ridding the movement of many of its major ills.

Legal Protection to Unions: When compulsory adjudication rules the field of industrial relations and the State has assumed the responsibility for ensuring peace in industry, the question of giving legal protection to unions is one of secondary importance, for in almost any difficult situation the State can set the machinery of adjudication in motion. But this will cease to be so when the majority of industries are, as we propose to suggest elsewhere, removed from the sphere of compulsory adjudication and allowed to regulate their industrial relations through collective bargaining. The question of unfair labour practices will immediately assume considerable importance. It is now

widely recognized that it was the enactment of the Wagner Act in 1935 in the United States which, by providing against unfair labour practices, led to a great expansion of unionism in America. Office-bearers and members of trade unions must be completely assured that trade union activity will not cost them their jobs and that there will be effective protection against illegal action in this respect by employers.

Mention has already been made of the Indian Trade Unions (Amendment) Act, 1947, which defined unfair labour practices and sought to put a check on them. For reasons mentioned, that enactment was not brought into force and though it still exists in the statute book, it is as good as repealed. If legislation for the definition and prevention of unfair labour practices is now contemplated, it might be as well to think of a fresh law rather than to resurrect the dead one.

Referring to the failure of Government to bring this law into operation, Professor Myers says in his book: "It may be presumed that this method of protecting and encouraging union growth is not favoured by the Government." He then quotes, in support, the "revealing statement" of a Government official as follows: "If your object is to build up a powerful trade union movement, then you would protect unions through unfair labour practice procedures, select majority unions by secret ballot, and all other methods tried in the U.S. But if your main objective is rapid economic development in a planned economy, you would not do these things. You must have a measure of discipline. Perhaps in 20 years, when we can afford strikes, we can afford to try free collective bargaining." Professor Myers comes to the conclusion in his closing chapter that "for the most part it is difficult to conclude that a strong, independent trade union movement is among the top priorities in Government's present labour policy." Since political and labour leaders repeat so often that they are doing their best to build up a strong and independent trade union movement, this conclusion of Professor Myers is a strong reminder to us that Government's performance in no way matches its promises.

If we give up adjudication and replace it with collective bargaining, the question of legal protection of unions becomes important. If outsider leaders are gradually to be excluded from the executives of unions, such protection becomes also urgent. In fact one of the main objections to the exclusion of outsiders is the fear of victimization of employees taking active part in union matters. It is, therefore, suggested that a comprehensive law defining, prohibiting and penalizing unfair labour practices be got enacted as a matter of priority.

The following is a typical, but not exhaustive, list of what would constitute unfair labour practice by employers:

(1) to interfere with, restrain or coerce employees in their right to engage in unionism and collective bargaining. This would include such prac-

tices as (*a*) threatening employees with discharge or dismissal if they joined a union; (*b*) threatening a lock-out or closure if a union should be organized; (*c*) granting wage increases at crucial periods of union organization with a view to undermining the efforts at organization; (*d*) putting pressure on individual employees through inducements or indirect hints of displeasure;

(2) to dominate, interfere with, or contribute support to any union. Unfair practices of this type would include: (*a*) an employer's taking an active interest in organizing a union of his employees; and (*b*) an employer's showing partiality or granting favours to one of several unions attempting to organize or to its members;

(3) to encourage or discourage membership in any union by discriminating against any employee in regard to hiring, discharging or any condition of employment. Instances of this are: (*a*) discharging or punishing an employee because he urged other employees to join or organize a union; and (*b*) refusing to reinstate an employee because he took part in a lawful strike;

(4) to discharge or discriminate against any employee for filing charges or testifying against an employer in an unfair practice case; and

(5) to refuse to bargain collectively with a union representing a majority of the employees. Evidence of such refusal would include (*a*) the making of a wage increase by an employer without consulting the representative union of employees when they have chosen such a representative, (*b*) making a wage increase larger than that discussed with the union representative, and (*c*) refusing to deal with the union representatives because the workers are on strike.

Unfair labour practice by a recognized union might include such practices as:

(*a*) for a majority of the members of the union to take part in an irregular (that is, illegal or irregularly called) strike;

(*b*) for the executive of the union to advise or actively to support or to instigate an irregular strike;

(*c*) for an officer of the trade union to submit false returns;

(*d*) to restrain or coerce workers in the exercise of the right to self-organization or to join unions or to refrain from such organization or joining. It would amount to an unfair labour practice under this clause for a union or its members (*i*) to mass picket in such large numbers that non-striking workers are physically debarred from entering the factory; (*ii*) to indulge in acts of force or violence in connection with the

strike; and (*iii*) to hold out threats of any kind against non-striking workers;

(*e*) to refuse to bargain in good faith;

(*f*) to indulge in certain types of prohibited secondary boycotts, sympathetic strikes, and jurisdictional strikes.

A regular tribunal, court or board will have to be authorized to hear complaints of commission of unfair labour practices. Such practices, if proved, should be punishable under the particular enactment. Reinstatement of dismissed workmen, payment of back wages, and similar remedies should be made available under the special law. Whether the union's recognition or its right to be the sole bargaining agent should be revoked is a moot point. Such a drastic step may not be justified, but the possibility of imposing penalties and disqualifications on offending union officials should certainly be explored.

Problem of Representation: The problem of the representative union or of recognition, which has already been discussed at some length in an earlier chapter, has been a difficult and controversial one in tri-partite discussions on the subject. At these conferences the views of vested interests have invariably prevailed. Suggestions that only majority unions should be certified as exclusive bargaining agents have been countered with the complaint that very few unions in India will be able to claim a majority membership and that any law prescribing a majority will prove unworkable in practice. Few have paused to consider whether a "majority union" is one which represents the majority of workers, or is one representing the majority of the unionized workers, or again is one which has a majority of those present and voting at an election. To suggestions that on the certification of a union as the recognized or representative union no other unions should have any rights of negotiation with, or of representation to, the employer, the plea usually taken is that many employees who are not members of the recognized union will be left without any remedy even in regard to personal grievances. Those who raise this plea conveniently forget the fact that a recognized and certified union must represent not only union members but all workers in the bargaining unit, including those who have not joined the union. It is to be feared that all such opposition stems from a desire to maintain the *status quo*. The possibility of the coming into existence of powerful unions must be proving a nightmare to some persons.

The 1947 amendment of the Trade Unions Act which did not come into force, the Labour Relations Bill of 1950 which lapsed, the recognition rules drawn up in conjunction with the Code of Discipline, and the Bombay Industrial Relations Act, which is the only existing legislation regulating recognition—all proceed on the assumption that minority unions considered in terms of the total number of workers can be recognized and that in

general the majority of unions seeking recognition would, in fact, be minority unions. It is this unfortunate reconciliation to the continued existence and operation of a multiplicity of minority unions that has created many problems of rival unionism. A union which has the support of only a minority of members should not become entitled to represent all workers. That would not be democracy in action. A minority union obviously does not command the confidence of a large proportion of employees and cannot, with any justification, undertake to fulfil obligations on behalf of the whole, or the large majority, of workers. Collective bargaining loses all its meaning when it is a minority union with which the employer has to bargain. The thrusting of responsibility on minority unions is the negation of the democratic principle.

The urgency of evolving a suitable procedure and machinery for the ascertainment of the representative character of unions is emphasized by the frequent occurrence of serious work stoppages due to the rivalry of unions and the attempt of new-comers in the field to dethrone those already in the saddle. Even when the country was faced with an emergency and an Industrial Truce Resolution had been spontaneously adopted by all concerned, the rivalry of unions was responsible for the violation of the Truce. Three major stoppages of work on this account took place in 1963. One was in the Buckingham and Carnatic Mills, Madras. A scheme of rationalization accepted by the recognized union was opposed by a minority union which brought about a cessation of work. The management had to declare a lock-out. In this case the recognized union was an H.M.S. union and the minority union an I.N.T.U.C. union.

In another case, the recognized union in the Indian Explosives Ltd. at Gomia in Bihar was an I N.T.U.C. union. The workers were dissatisfied with the handling of their demands by the I.N.T.U.C. union, and took their union from I.N.T.U.C. to H.M.S. leadership. The new leadership faced much antagonism from several quarters and when it found that the Government was prepared to refer to adjudication only two out of several disputes in accordance with the wishes of the I.N.T.U.C. leadership, it declared a strike. The H.M.S. leaders were arrested under the Defence of India Rules. Eventually the arrested persons were released and most of the demands raised by the H.M.S. union were referred to conciliation. The strike was largely a success and was really for recognition of the H.M.S. leadership.

The strike in Sankey's Electrical Stampings, Bombay, in 1963, which went on for many days was primarily for recognition of the protesting union. The same union is reported to have served strike notices on several other managements over the same issue, namely, recognition. In many of these cases the victim sought to be ousted is an I.N.T.U.C. union, which must have secured recognition from the employer either voluntarily or after a membership check-up. The accusation against I.N.T.U.C. unions is that they are artificially propped up by managements in an attempt to ward off real and militant

unions. Whatever that be, such strikes do not really raise any economic issues.

The recent policy of the Central Government in supporting the claims of unrecognized minority unions has led to further complication of the already unsatisfactory situation relating to the recognition of unions. A decision taken at the 22nd Session (July 1964) of the Indian Labour Conference says that unrecognized unions should have the right to represent individual grievances relating to dismissal and discharge or other disciplinary matters affecting their members and that "the question of other rights of unrecognized unions was deferred for future consideration." The President of the Employers' Federation of India has, as late as September 1964, expressed considerable surprise at the demand made by the Central Labour Ministry that employers should deal with unrecognized unions even in establishments where there is already a well-functioning recognized union. This demand, it appears, is based on an interpretation of the Industrial Truce Resolution which was voluntarily adopted by employers and workers in the wake of the Chinese aggression. Referring to this the President has said that "frequent and deliberate misinterpretation by Government of the text of the Truce Resolution on matters such as arbitration has made the employers lose their faith in the Truce." He could only conclude that Government had not appreciated the full implications of its advocacy for unrecognized unions. The recent move was contrary to the decision taken at the Indian Labour Conference in 1958 when the Code of Discipline containing the provision for recognition of unions was adopted. Then it was definitely understood that only one union, namely the most representative union, was to be recognized. The Code of Conduct which was meant to do away with unhealthy rivalry between unions had seldom been respected by the parties concerned, and instead, some of the unions had indulged in accusations against employers of exploiting the multiplicity of unions by resorting to a policy of "divide and rule."

The compulsion to recognize unrecognized unions when another union is already in the saddle is a measure directly opposed to the policy of union security insisted upon by unions in other countries. Official support for the recognition of unrecognized unions will further encourage the rampant rivalry that afflicts the trade union movement.

If it be accepted that collective bargaining will be the chief method of settlement of issues and disputes in the majority of industries, even though this may be achieved only gradually, it is necessary to build up and recognize as representative unions or bargaining agents—whichever term we prefer to adopt—only majority unions. It is only this course that will make collective bargaining a reality.

When we speak of "majority unions", we are heading for an obvious pitfall which has caused much confusion and misunderstanding in this country in regard to the meaning of that term. An argument commonly used by critics of the concept of the representative union is that very few unions in India have as their members a majority of workers and that in any case in a

representation election it would be difficult to ensure that all or most of the members of the union claiming certification record their votes in favour of their union. In America too this concept has lent itself to different interpretations at different times. Section 9(a) of the Labor Management Relations Act, 1947, says that "Representatives designated or selected for the purposes of collective bargaining *by the majority of the employees in a unit* appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, etc." In the early days of the administration of these provisions, the National Labor Relations Board, which is charged with the responsibility for conducting and certifying representation elections, used to interpret the term "majority" as meaning a majority of those eligible to vote at an election. But this soon led to undesirable consequences. A minority union bent on doing down the union claiming certification had merely to coax or coerce a sufficient number of eligible members into abstaining from voting at the election, thus depriving the latter union of the requisite majority. The Board, therefore, changed its policy and declared that it would certify a union receiving a majority of the votes polled at an election. It then became necessary for rival unions claiming election to bring out in full force all possible supporters. In Board elections these days as many as 90 per cent of the eligible voters cast their votes and the union securing a majority of the votes cast and thus becoming entitled to certification is often one which has, in fact, received the support of the majority of the entire electorate.

We too could usefully follow this practice. A union receiving a majority of the votes polled at an election should be entitled to certification. If there are two or more unions contesting representative status and none secures a majority of the votes cast, there would then be no representative union. Similarly even if there be only one or two unions claiming representative status, the workers must have the option of voting "No union". The crux of the matter, therefore, is that of the votes cast, the majority must favour a union to enable that union to be certified as the bargaining agent.

The policy of certifying a union which has received the majority of the votes polled at an election has the added merit of meeting the argument of critics that Indian unionism is not developed enough to produce unions which can boast of a 51 per cent membership. Under the suggested arrangement a union which may not have as its members 51 per cent of the workers of the bargaining unit may yet get certified on the strength of its polling a majority of the votes cast at the election. And if only the certified union is permitted to represent workers to the total exclusion of all other unions, the certified union will soon be able to build itself up to substantial proportions.

Election through Secret Ballot: Ascertainment of the majority status of a union claiming to be certified as the bargaining agent is by election through a secret ballot of the concerned workers in most western countries which

have provided a machinery for the purpose. At present, in India the ascertainment of the strengths of unions, wherever this is relevant, is by a membership check carried out by an official organization designated by the Government.

The Central Government and, following its lead, the State Governments have rejected the proposal that the majority status, or the representative character, of a union should be decided by election through a secret ballot. While the A.I.T.U.C. has accepted, and even demanded, election, the I.N.T.U.C. is vigorously opposed to it. Both the Government and the I.N.T.U.C. say that the representative character of unions should be settled through a scrutiny of union memberships and that election has no meaning for two reasons. First, in an election even workers who are not members of any union will have the right to vote and that this cannot be accepted. Secondly irresponsible trade union leaders are likely to make wild promises and the one that promises the most without any intention of fulfilling the promises will be the one to be elected. Both are fallacious arguments. If the representative union is to represent all workers in the unit and not merely union members, there is no reason why the entire labour force should not take part in the election. Van Dusen Kennedy makes the interesting point that elections to the U.S. Congress and the Indian Parliament are not decided by counting the memberships of rival political parties. If the objection is that non-union members will reap the benefit of the union effort without having to make any payment, the remedy lies in the union's trying to secure union security rights, such as union shop, from the employer. Denial of the right to vote to the non-union worker would be like denying the right to vote to a non-party citizen at the public elections. If extravagant promises are likely to win the day, the Congress Party should have been dethroned long ago, for there has been no dearth of extravagant promises from opposition ranks.

The system of deciding labour representation through membership check is obviously unsatisfactory even if no credence is given to opposition complaints that verification of memberships is a farce and that the results are rigged up by the official machinery to prop up the I.N.T.U.C. Out of the memberships claimed by the various central organizations of labour, not much more than 50 per cent is officially certified. The I.N.T.U.C. claimed at the last verification a membership of 1.9 million, but the verified membership came to only one million. Other central organizations fared even worse. There are numerous ways of bloating up memberships. One favourite method is to show that a large amount was collected as membership fees from non-existent members and that it was spent on union activities. Such fictitious receipts and expenses cannot be exposed in audit and are specially cooked up for the benefit of the official agency scrutinizing membership strengths for various recognition and representation purposes.

If election through secret ballot is good enough for entrusting the reins of Government to a political party, it must be good enough for a much

smaller purpose, namely, representing workers in collective bargaining and in various other labour-management situations. Election through secret ballot is the democratic way of ascertaining the wishes of the electorate. If Government wants to ensure collective bargaining through representative unions, it must provide for the election of the representative union and for the ignoring of all other unions for a stipulated period. To nullify the difference between representative and non-representative unions is to give up all idea of collective bargaining. The pressure exerted by Government on employers in recent times to negotiate with unrecognized unions is the most effective way of destroying what little collective bargaining there is in the country.

If Government decides to undertake legislation governing unfair labour practices and the certification of the representative union, it should decide to set up a special and independent agency for the administration of the law. Part of the work of the agency will be judicial and part administrative. Questions relating to unfair labour practices will belong to the former category as also certain questions relating to representation, such as the defining of the appropriate bargaining unit in a particular case. But the actual process of holding elections will be an administrative task. The formal process of certification would be judicial in character, especially if the law makes provision, as it should, for the certification of unions as bargaining agents even in uncontested cases in which no elections are required to be held. It is of the utmost importance for the success of collective bargaining that the machinery for enforcing the legislation should not have the stigma of subservience attached to it. This can be ensured only if the Labour Ministries of the Central and State Governments, which are responsible for all labour matters, are freed from the responsibility for administering this special law. It is suggested that this responsibility should be vested in the Law or Judicial Ministries of the various Governments which are responsible for the administration of the judicial systems of the Centre and of the States.

When collective bargaining develops, unions will have to learn to enter into comprehensive collective agreements with employers rather than piecemeal agreements relating to disputes which have actually arisen. Much of the comprehensive agreement will not need to be changed at subsequent renewals. The large majority of provisions will automatically be carried over. The main purpose of having such comprehensive agreements is to fix the positions of the parties in respect of all matters for the period of the agreement. The sudden raising of demands can be avoided by such a procedure. Otherwise there will be no end to bargaining and the whole year will be spent in one bargaining after another. The art of negotiating and concluding collective agreements will have to receive prominent attention at the hands of the Workers' Education Scheme authorities.

Collective bargaining agreements should be of reasonable duration. It is now widely recognized that the annual agreement, which hitherto has been the most common form in the West, opens up issues every year and throws

up too much work on both the management and the union. The recent tendency has, therefore, been to conclude agreements for longer periods wherever this is feasible. A five-year agreement may be unsuitable unless provision is made for re-opening certain issues during the period. A two- or three-year period might well be the ordinary rule.

A union certified as the representative union should have undisturbed possession of the field for a prescribed period—say one or two years. During that period no other union should be given any hearing or facilities by the employer or any governmental authority—whether for collective disputes or for individual grievances. Any attempt made by unrecognized unions at disruption of the labour-relations atmosphere should be resisted with all the resources available under the law.

Compulsory Membership: In industrially advanced countries there are various arrangements such as the closed shop, the union shop, maintenance of membership, etc., which have the effect of compelling workers to join unions. Along with these the "check-off" is also common, whereby the employer recovers union dues through the payroll and remits the amount to the union. The question has often been raised whether such arrangements are appropriate to the conditions obtaining in India. The closed shop is now illegal in the United States, but many of the previous closed shop arrangements still continue informally. All such arrangements are meaningful only in a system which provides for the certification of a majority union as the bargaining agent. The principle is that when once a union has attained majority status and secured substantial benefits for its members at considerable expense to itself, those who enjoy the benefits should contribute to the expenses by paying membership fees.

In the present state of Indian trade unionism, there might be objections to such arrangements being brought into force statutorily or even by agreement between the employer and the "recognized" union. Most of the so-called recognized unions now functioning are minority unions with a mere 10 or 20 per cent of membership. Moreover in the present state of rivalry among trade unions resulting from their political affiliation and outlook, arrangements to ensure union security will be widely misunderstood to mean artificial support for the building up of unions belonging to particular central organizations.

The making of provision for union security and compulsory memberships would be feasible when arrangements are made for the certification of majority unions as bargaining agents or recognized unions. With a majority union in the saddle, there can be no legitimate objection to employer support to union security provisions. Till that stage is reached, check-off arrangements may be tried only in establishments which are not afflicted by the worries of rival trade unionism. Where rival unionism has created difficult situations for the employer, it might be a safe policy for the employer to

refuse to accept check-off arrangements in favour of any union.

Violence in Industry: Violence in industrial areas has been on the increase ever since Independence. It is a sign of the gross immaturity of the labour-management relationship. Other countries too have experienced violence in the early stages of the development of their trade unionism but under wholly different circumstances. That was in an era when trade unionism had barely grown out of the stigma of being a conspiracy and employers, powerful captains of the *laissez-faire*, were bent on putting down agitation with a strong hand. Many trade unions, especially in America, were afraid of operating openly even in the second half of the 19th century. They had a wholesome fear of employers' agents, spies, and paid hirelings such as the Pinkertons. Several of them, therefore, started organizing themselves as secret societies with elaborate rituals, sign grips, passwords, and the like in a desperate bid to avoid the eyes and ears of the employers and to ensure that "no spy of the boss can find his way into the lodge room to betray his fellows."[12] Secret societies, with such quaint names as the Ancient Order of Hibernians, a militant Irish miners' union, the Knights of St. Crispin, a union of boot and shoe workers, the brotherhoods of railroad workers, and the Order of the Knights of Labor, a large organization in some ways the forerunner of A.F.L., came into existence. Employers took every opportunity to take legal action against unions through injunctions and prosecutions and went to great lengths to gather evidence against the secret and violent activities of prominent union leaders. The State militias, deputy marshals, and private Pinkertons were all pressed into service to thwart large strikes.

A number of these secret societies were admittedly violent organizations, bent on meeting violence with violence. The "Molly Maguires", a terrorist organization in the mines, the "Wobblies" (as the members of the Industrial Workers of the World were called), and similar bodies believed in violence and sabotage.

In the United Kingdom too there was violence at certain periods of the growth of trade unionism, but perhaps on a much smaller scale than in America. Before 1825 trade union members were administered oaths to keep the proceedings secret. Though the Combination Acts were repealed in 1824, an Act was passed in 1825 greatly restricting the permissible range of combination. The Act laid down heavy penalties against 'intimidation, molestation and obstruction.' As late as 1834, the Tolpuddle Martyrs were prosecuted for administering unlawful oaths. In 1866, with the formation of a body known as the U K. Alliance of Organized Trades at Sheffield, there occurred a number of outrages at Sheffield which a Royal Commission set up subsequently attributed in part to trade unions.

While in the United Kingdom and in the United States workers might

[12] Florence Peterson: *American Labor Unions*.

have indulged in violence in an attempt to meet the militant methods of employers and to save themselves from wholesale annihilation, violence has disappeared with the advent of regular collective bargaining. Violence is not used to extort a concession from the employer. But that is not the case in India today. Even the worst critics of employers in India will not be able to allege that trade unions are denied the right of association. A number of Indian trade unions are plainly indulging in violence in a thoughtless attempt to force employers to accept their demands.

The record of violence in industry during the last 15 years or so is quite frightening. Foreign experts coming to study the conditions of Indian labour are quite appalled by the extent of violence in industrial areas. Professor Charles Myers of Massachusetts who spent many months in India studying labour-management relations has recorded in his book many instances of serious violence, including the case of the burning alive of a European supervisor in a furnace in the Calcutta area, the forcible entry of a group of strikers into a moving locomotive, removal of the driver and release of the locomotive into an assembled crowd, and the locking up of a Government conciliator in U.P. on the ground that an employer had not paid wages in time. Professor Richardson of the Manchester University, who came out to India for several months as an I.L.O. Expert, says in his report: "An unhappy feature of industrial relations in India is the frequency of violence, intimidation and victimization in industrial disputes. These abuses are particularly marked in certain industries and regions. Such methods have been used in other countries, but they are signs of immaturity in industrial relations. The use of these methods is an ugly aspect of industrial relations and is contrary to the best attitudes of the Indian people, who favour non-violence."[13] Violence has continued to plague labour-management relations in recent times. "More than 8,500 man-days were spent by the police in maintaining law and order in coal mines in the Ranigunj coalfields in 1960. Six men were killed and more than 200 injured in clashes in 11 coal mines during the year. The disturbances occurred in Amritnagar, Belbad, Chapui Khas, Dabur, East Nimcha, Selected Jambad, Modern Satgram, Northbrook, Real Jambad, Selected Kajora Jambad and South Samla"—so ran a newspaper report in the *Statesman* on 23 March 1961.[14] The report was, however, somewhat inaccurate in saying that the police were maintaining law and order; they might have attempted to do so, but the success of their efforts was highly doubtful. The Union Labour Minister paid a visit to one of the Satgram Collieries, which was the scene of prolonged violence, and the tale unfolded was that police action had proved wholly ineffective. Several members of the police force themselves freely confessed that they were not receiving

[13] Prof. J. H. Richardson: *Report to the Government of India on Labour-Management Relations*, 1959, p. 28.

[14] *Statesman*, 23-3-1961.

support or instructions from higher quarters and that they were intervening to the minimum extent necessary lest they should get into trouble with their bosses.

The Police Minister of West Bengal was reported to have made an on-the-spot study of the incidents and to have come to the conclusion "that the existence of genuine or supposed grievances in the minds of workers and the emergence of a militant labour movement in some of the affected mines were the main causes of the trouble." [15] But the newspaper correspondent of the *Statesman* reported after a tour of the region that "Mine managers and senior personnel officers with whom I discussed the subject thought that many of the conflicts could have been avoided if the principle of one-establishment one-union was effectively followed by holding general elections or plebiscites among workers. They said that the Government had accepted this in principle at the tri-partite conference held at Naini Tal but took no steps to implement it." This complaint made by the managers and personnel officers of coal mines in March 1961 may be compared with a similar complaint made by the President of the Employers' Federation of India at the annual general meeting of the Federation held in September 1964 that employers were being asked by Government "to deal with unrecognized unions even in establishments where there is already in existence a well-functioning recognized union." It is obvious that then as now, Government and politicians were indulging in pronouncements which they had little intention of implementing.

The newspaper correspondent went on to say that the workers complained that the police always gave protection to mine owners and not to workers but that mine owners alleged "that the police in most cases acted like sightseers and did not take prompt and effective measures to hold or restrain disturbing elements."

Another report which the press carried was the following: "It is reported that in the afternoon of 18 February 1960, large crowds collected in the power house area at Bhilai Steel Plant, cut the pipe carrying liquid fuel and took possession of the ash pump there. Only the arrival of police reinforcements in time saved serious damage to the machinery." [16] Reporting this incident a unionist writing in the *Free Press Journal* said: "These incidents have also proved that at least a section of our trade unionists still believe in sabotage as a major weapon in the armoury of the workers' fight for rights." The correspondent went on to add: "There is a tendency in the labour movement in this country to regard 'extreme action' like sabotage as a short-cut to success. In fact, this is a symbol of the immaturity of trade union leadership."

The frequent misbehaviour of labour has not escaped the attention of

[15] K. P. Mukherji—*Statesman*, Calcutta, 23-3-1961.

[16] Unionist in *Free Press Journal*, 24-2-1960.

shrewd observers among ministerial ranks. The Finance Minister of Madras State, speaking at a function in June 1959, said: "Unfortunately the labour movement in our country has been developing in such a way that in some institutions the employees feel glad when their institution is in difficulties, particularly when it is due to the mischief of the employees themselves." [17] The Minister warned labour that it might be difficult for Government to safeguard their interests if they created difficulties to the managements of institutions in which they worked by any "misbehaviour."

The strike which took place in the Tata Iron and Steel Company in the latter half of 1958 was attended by considerable violence. It was essentially a struggle between the recognized union which was an I.N.T.U.C. union and the contending union which was an A.I.T.U.C. union. A special article in the *Commerce* of 14 February 1959 reported the struggle in the following words: "Jamshedpur was the scene of a miniature cold war in which one union, pledged to democracy, sobriety and peaceful agitation for better living standards for its members, was pitted against a union ideologically wedded to a philosophy which is inseparably linked to violence and subversion of the existing political, social and economic order. Although the war ended in a victory for sanity, it is undeniable that success did not come without a painful struggle. In many other centres, a similar cold war, at different degrees of political temperature, is being fought."

According to a press report, at the Labour Ministers' Conference held in July 1963, a State Labour Minister is said to have complained that labour relations were adversely affected by political and trade union rivalries. He is said to have added that threats of violence and intimidation were often employed by workers' organizations. According to the same report the State Labour Minister in Assam had recently been a victim of violence consequent upon inter-union rivalry. "The Union Labour Minister did not appear to have offered any solution to this problem of inter-union rivalry, intimidation and violence."

For more concrete evidence of violence on factory premises, let us take the case of Company A in one of the Bombay suburbs. This Company, which has some 3,000 workers on its rolls, pays one of the highest wages in Bombay. Its purely unskilled labour, the lowest category in the entire establishment, earns over Rs. 280 per month, inclusive of dearness allowance and production bonus. This Company reported to the local police and the State Government no less than 33 cases of violence and gross indiscipline on the part of workers over a period of three years. A few samples of cases reported were: (1) Production Supervisor beaten up by a worker, (2) A Senior Foreman threatened by workers of his department because he did not side with them in a controversy with the management, (3) A workman beaten up for not joining the union, (4) A Supervisor beaten up by a temporary

[17] C. Subramaniam: *Hindu*, 20-6-1959.

employee because the latter's employment came to an end, (5) An Assistant Personnel Officer threatened by a worker for failure to give continued employment, (6) Officers stopped at the gate and forced to pay contributions to the union, (7) A Supervisor badly beaten up by a worker outside the gate, (8) A Foreman severely beaten up resulting in multiple injuries, (9) A worker's relative threatened with a dagger because of the worker's refusal to abstain from work, (10) A contractor beaten up for failure to employ particular employees.

In the midst of so many cases of violence attributed to labour, there is an occasional complaint of attack against a labour leader himself. According to a news item in the Bombay papers of 28 January 1965 a trade union leader in the engineering industry was stabbed by assailants on the previous day. "The Bombay Municipal Corporation and a few trade unions and political parties joined in deploring the attack." A day's token strike was observed on the day of the incident by some 55,000 workers. The news report added: "The municipal corporation, in an unusual gesture, adjourned for ten minutes adopting a motion moved by Mr. Krishna Desai." Thereafter a procession marched to the Secretariat to meet the Labour Minister who was reported to have condemned the action of the assailants.

While it is fitting that attacks on important leaders should be condemned, it is only fair that some notice be taken by somebody—police or Government—of the numerous cases of assaults perpetrated on loyal company employees by disgruntled elements. One discharged employee in the Bombay Company mentioned above, is said to have attempted to solve the unemployment problem by threatening the Personnel Officers and Foremen that if he was not provided with employment, he would beat them up. Complaints to the police merely led to a few more entries in the police registers.

Many employers, certainly not reactionaries or slave-drivers, have felt that the excessive pampering of labour by the Central and State Governments, more by words than by deeds, has led to great deterioration of discipline among workers. The Chairman of the Employers' Federation of Southern India, addressing the annual general meeting of the Federation in 1959, said that the Government's unrealistic labour policy and the "kid-gloved" manner in which it tackled indiscipline had retarded industrial activity. Labour legislation, he said, was all one-sided and while employers were not opposed to the benefits given by various legislative measures, they felt that labour should give a reasonable return, behave in a disciplined fashion and negotiate its demands in a rational manner, using the weapon of strike only as a last resort. The Chairman went on to say that "the idea is now prevalent among workers that those who participate in illegal strikes cannot be subjected to disciplinary proceedings. There are tribunals which have gone so far as to hold that illegal strikes can be justified." He added: "Rightly or wrongly the feeling exists that the increase in strikes and demonstrations is to some extent due

to the attitude of the Government. The question calls for serious consideration by the Government to remove this belief."[18]

We have dwelt at some length on this unpleasant topic, instead of succumbing to the temptation of disposing of it in a brief paragraph, because of the impression widely held that when the pot is boiling and is about to spill over, the cook is looking somewhere else. Labour leaders have been making veiled allusions to the early occurrence of conditions which the ordinary person would find it difficult to distinguish from a violent revolution. One is left wondering whether the cases of violence occurring in individual establishments are without significance. A temporary worker loses his employment and the personnel officer is threatened. A foreman questions a worker why he was found absent at his place and is promptly threatened. A departmental head holds an enquiry and submits a report; the worker who is found guilty threatens him. A company tries to enforce the standing order that workers entering the factory should produce their identity cards or work tickets, and the union threatens to start a strike. These things go on day after day unchecked. It is time the authorities in charge of labour relations and of law and order decided for themselves whether anything should be done to stem the growing tide of violence. If the forces of law and order cannot, or will not, effectively check the many instances of day to day violence, they will find themselves completely paralyzed when the mob takes over the law and order position.

Another unedifying spectacle which is not unrelated to the growing tide of violence and indiscipline is the ease with which certain sections of labour are able to call widespread strikes and hartals and to paralyze the economic life of the nation on the ground of what are essentially the woes of the citizen, without any of our top leaders, whether inside or outside the Government, being able to raise the least little finger of protest against such propagandist political stunts. The 'Bombay Bandh' called some months ago to protest against rising prices and similar grievances and which resulted in the complete stoppage of all industrial and economic activity for a whole day proved the inability of our leaders to give any lead. The I.N.T.U.C. which has a representative union in the large textile industry of Bombay did nothing to convince the workers that the slowing down of production would only increase prices and not reduce them. In their helplessness ministers started appealing for calm and quiet. So long as the organizers got what they wanted, they had no intention of indulging in violence for the sake of violence. Because of the inability of Government either to canvass public opinion against the strike or to give protection to establishments and employees who were prepared to work, the general strike became complete. There was, therefore, no occasion for any violence. The organizers must have felt mightily pleased at the result. If ever politics rode roughshod over trade unionism, this was

[18] E. F. G. Hunter: *The Mail*, Madras, 31-3-1959.

it. Incidents like this prove beyond doubt that trade unionism will have no future if it is tied to the apron-strings of political parties.

Violence and indiscipline must harm labour far more than it would harm management. The greatest harm it can do is not physical but the slowing down of the march of trade unionism. Union leaders will be deluding themselves by believing that their constitutional activities will gain in strength with the occasional helping hand of violence.

Summary of Suggestions: The more important of the suggestions made in this chapter may briefly be summarized as follows:

(1) Industrial democracy should march hand in hand with political democracy.

(2) The existence of a strong, united, and independent trade union movement is the most important characteristic of industrial democracy.

(3) Only trade unions can properly represent the industrial interests of the working classes.

(4) Some 3 to 4 million of organized urban industrial labour constitute the spearhead of the labour agitation and carry away the large bulk of the fruits of agitation. This is a small portion of the entire labour force of the country. The unemployed and the under-employed, the rural small-scale peasantry, and the agricultural labour, totalling many staggering millions, derive little assistance or benefit from the arrangements connected with labour-management relations.

(5) The process of introduction of modern management methods in Indian industry should be hastened and managerial and executive staff got trained in them, particularly in progressive personnel administration and human relations.

(6) Managements should pay more attention than in the past to the development of welfare measures for workers.

(7) The possibility of utilizing at least a good portion of the annual bonus, now frittered away on ephemeral pleasures, for industrial housing should be explored.

(8) Indiscipline in industrial housing colonies has dampened the enthusiasm of employers for such colonies.

(9) Legislation to ban outsiders from the executives of unions should be undertaken.

(10) The abolition of outsiders on executives should be achieved by progressive reduction of numbers in two stages. At the end of 10 years, there should be no outsider on any union executive.

(11) In order to encourage the consolidation of unions, the principle of the representative union should be developed, and no support or encouragement should be given to unrecognized unions.

(12) Small unions should be encouraged to amalgamate with one another

to form financially and organizationally viable units, and for that purpose, enabling legislation should, if found necessary, be enacted.

(13) It is of advantage to have large and powerful unions so that they may effectively represent labour with the help of adequate resources, influence and responsibility.

(14) The large unions envisaged should be national unions serving the whole of a particular industry, trade, or employment throughout the country.

(15) Under each national union there should be an adequate number of branches to look after problems in individual establishments.

(16) The central organizations of labour cannot cope with the day to day problems in many industries and in many places. They should, therefore, not attempt to take the place of national unions. They should agree to a limitation and redefinition of their responsibilities and spheres of action.

(17) Trade union funds are wholly inadequate for the barest minimum of activities. Regular collection of adequate subscriptions is necessary.

(18) Even under Indian conditions, subscription rates of say one to two per cent of the earnings cannot be deemed to be excessive.

(19) Rivalry between the central organizations of labour leads to the creation of rival unionism in the field—an unsavoury complication necessitated more by political exigencies than by economic considerations.

(20) The elimination of outsiders from trade unionism and the creation of strong national unions might pave the way for trade union amity and unity.

(21) In order to encourage collective bargaining, the State must get enacted as a matter of priority a comprehensive law defining, prohibiting and penalizing unfair labour practices and providing for the certification of representative unions.

(22) A regular tribunal, court or board will have to be authorized to hear complaints of commission of unfair labour practices.

(23) It is necessary to build up and recognize as representative unions or bargaining agents only "majority" unions.

(24) "Majority" means a majority of the votes polled in a representation election.

(25) Representation elections should be by the secret ballot.

(26) The legislation governing unfair labour practices and the certification of the representative union should be administered by a special and independent agency.

(27) Collective agreements should be comprehensive in coverage and should be of reasonable duration.

(28) Unrecognized unions should have no *locus standi* in industrial relations.

(29) Support for union security provisions will be found difficult until

arrangements are made for the certification of majority unions by the secret ballot.

(30) Violence in industrial areas has been on the increase ever since Independence.

(31) Violence and indiscipline will cause much harm to labour and slow down the march of trade unionism.

CHAPTER XIV

SURVEY AND SUGGESTIONS — INDUSTRIAL RELATIONS

Labour Policy of Government: In the present state of the country's economy characterized by rising prices, growing inflation, and low and stagnant productivity, it is the responsibility of the State, which has embarked on comprehensive planning, to formulate specific policies in all fields including labour. And yet even in matters vital to the success of the plan such as wages, bonus, and productivity, State policy is vague and indefinite.

The labour policy enunciated in Chapter XV of the Third Plan is a string of generalizations and pious hopes giving no positive lead even in regard to matters of current agitation. The Plan says that the development of industrial relations "rests on the foundations created by the working of the Code of Discipline which has stood the strain of the test during the last three years." Anybody who is in touch with the day-to-day working of labour-management relations would have to admit that the Code of Discipline has not been a conspicuous success, that it has not stood the strain of test all these years, and that its foundations have been scoured off by suspicion and disbelief. How else can one explain the spate of violence, coercion, and intimidation that is going on unchecked in spite of the existence of a national emergency, the abusive and violent demonstrations that are being staged, the increasing trend of rivalry among unions that is responsible for many strikes, the retaliation by some employers, and in general the state of tension that prevails not merely in particular establishments but over whole industrial areas? It was certainly not the intention of the Code that there should be no increase in workloads or that there should be no retrenchment at all. The basis of the Code was that there should be prior consultation and agreement, and yet if in every case a contemplated increase in the workload or a retrenchment, howsoever small in magnitude, produces no agreement and leads to a major crisis, that would not be the proper way of honouring the Code. The working of the Codes has been examined at some length in an earlier chapter.

Let us get down, for a sample, to the specific areas of wages, bonus and productivity, and see what we can find by way of State policy.

Wages constitute one of the major problems in the field of labour-management relations. The largest number of disputes pertains to this one subject. The First Five Year Plan contemplated a certain restraint in the award of a higher level of wages, but the subsequent plans abandoned that position without taking any definite stand in the matter. The result has been that unions have been clamouring for a substantial increase in the wage level from

time to time and industrial tribunals have been yielding to the pressure. The Third Five Year Plan merely makes a general reference to the fixation of wages under the Minimum Wages Act, the setting up of wage boards for settling wage disputes in major industries, the principles of wage determination contained in the report of the Fair Wages Committee, 1949, and Government's decision to re-examine nutritional standards in their relevance to the concept of the need-based minimum wage which touched off a controversy and almost discredited the Government's tri-partite machinery of consultation during consideration of the Second Pay Commission's report. The Plan makes the socialistic pronouncement that "there are, however, wide disparities between the wages of the working class, on the one hand, and the salaries at the higher management levels, on the other." It is discreetly silent on the wide disparities that exist between the wages of urban industrial labour and of other labour, particularly artisan and agricultural labour.

Since we are here concerned with the absence of a wage policy in Government's planning, which in many respects purports to be comprehensive and all-pervading, rather than with the evolution of a positive wage policy, it is unnecessary to enter into an elaborate discussion of what that policy should be. And yet it seems necessary to bring out certain glaring deficiencies in Government's treatment of wages in the Plan. India is in the early stages of planned economic development. Though three five-year plan periods are over, nobody can feel satisfied with the results achieved so far on the economic front. A crisis worse than ever has overtaken many critical aspects of the country's economy. Prices have steadily gone up; inflation has gathered momentum; capital formation and industrial production have received a setback; the foreign exchange crisis is both deep and lasting. In the midst of so many unfavourable trends, it would be a short-sighted policy indeed for the State not to apply itself vigorously and effectively to such a key problem as a policy towards wages.

The wage policy in a developing economy is admittedly a difficult subject for the planners. It should, to the extent possible, accelerate economic development; at any rate it should not accentuate the inflationary trends inherent in the execution of ambitious plans with limited resources. Economists tell us that in a period of economic development, even if wage rates continue to be stable, the total wage bill will increase with increasing opportunities for employment and that this itself will add to increase in prices and inflation if the supply of the so-called 'wage-goods' is not increased correspondingly. An equilibrium has to be maintained between the supply of wage-goods and the total wage income so that there is neither shortage nor excess in the purchasing power of the large mass of wage earners. In such a state of precarious balance between the two crucial factors, control on wages may become necessary as one of the various anti-inflationary measures. That is why economists point out that in a developing economy, there is need for both a lower limit and an upper limit to the level of wages. Where exactly

these two limits should be fixed is a matter for much study and careful consideration.

In a developing economy the importance of adopting systems of payment by results as a means of providing incentives for the raising of productivity cannot be over-rated. The Third Plan does not highlight this requirement at all. The Second Plan gave some feeble support to payment by results, but there it seems to have stopped. The State could usefully undertake studies and supply information to employers and unions on (*i*) the results of the application of different systems of remuneration and their advantages and disadvantages, (*ii*) the relative urgency of increases in production in various industries and the likelihood that the application of systems of payment by results would help to secure the desired increases in output, and (*iii*) the adaptation of accepted systems of payment by results to Indian conditions. The I.L.O. made a recommendation to this effect at the Asian Regional Conference held at Tokyo in September 1953, but little has been done to carry out the recommendation. A mere repetition that payment by results should be adopted does not help to enable progress to be made in that direction.

The inflationary effects of the distribution of large amounts as profit bonus on the ground that a living wage has not been attained have been commented upon by several authorities. The Government of India themselves considered this aspect of bonus in 1949, but this seems to have been forgotten or ignored in recent years and particularly by the Bonus Commission.

Government's preoccupation with the setting up of wage boards, and sometimes a second round of wage boards after the first, in well-established industries where unions are powerful and workers are not the exploited and downtrodden ones they are sometimes assumed to be can be justified only on one assumption, namely that even though the workers may be getting much higher wages than any minimum that could be fixed, the industries concerned have the capacity to pay and could be squeezed more tightly than in the past. Such an assumption conveniently ignores some of the basic economic facts relating to capital formation, especially in developing countries.

Above all the fact that no wage policy, if evolved, can be realistic unless it is treated as part and parcel of a composite examination of the connected problems of prices, profits, taxation, control over the sale of consumer goods, etc., does not seem to have received the attention it deserves at the hands of the planners.

On the question of bonus, the Plan is content with the statement that the whole matter has been referred to a Commission. The recommendations of the Commission and Government's reported decisions have been mentioned earlier. The proposals to fix statutorily a minimum bonus of 4 per cent of the total of basic wages and dearness allowance, regardless of profits or losses, to discontinue the allowance now given for the rehabilitation of machinery and to protect existing terms relating to bonus, if more favourable, have

all been characterized by employers and others as being detrimental to the economy of the country as a whole, but such criticisms have not elicited any cogent enunciation of policy by Government. When Government takes decisions on disputed or controversial points, it seldom takes the trouble to explain the reasons for the decisions through explanatory or policy statements. Even the very question whether in the present state of the country's economy an annual bonus, which upsets labour-management relations for considerable periods each year, and which, as one of the employers' representatives on the Bonus Commission claimed, "thrives entirely at the cost of the consumer", is at all justified has not received any consideration as the matter seems already to have been pre-judged.

On productivity, the advice is largely one-sided. "Management has to give the lead by bringing about the maximum rationalisation in its own sphere and eliminating all unjustifiable practices which at present act as dis-incentives in drawing the best out of the workers."[1] Then it says that "the term (rationalization) has often been wrongly associated with increase in workloads and added strain on workers in order to swell the volume of private gains. Large gains in productivity and an appreciable reduction in unit costs can be secured in many cases without causing any detriment to the health of the workers and without incurring any large outlays. Greater responsibility in this respect rests on the management which should provide the most efficient equipment, correct conditions and methods of work, adequate training, and suitable psychological and material incentives for the workers." The Plan is altogether silent as to how "the most efficient equipment, correct conditions and methods of work, adequate training, and suitable psychological and material incentives" can be provided "without incurring any large outlays" and whether the most efficient equipment will need the same number of workers as the antiquated and obsolete equipment. These are self-contradictory homilies, the effect of which is to assure the workers that the State will ensure higher productivity by compelling the employer to mend his ways and that it will be no party to an increase in the workload or to an increase in the strain on workers, which the Plan presumes are inflicted "to swell the volume of private gains." Government does not appear to have made any surveys in recent times to find out whether workers are turning out a fair day's work or whether their health runs the risk of a breakdown because of overwork. Such technical studies as are got made in industry through consultants in the course of implementation of incentive systems of payment show that actual performance is often far less than what is attainable under a normal and comfortable tempo of work. It should be an eye-opener to many to hear that in a Bombay establishment which pays a production bonus of 50 per cent or more of basic wages and dearness allowance, the overall performance index is no more than some 42 per cent. Here it would be interesting to recall what was

[1] *Third Five-Year Plan*, p. 262.

mentioned in Chapter I, namely, that the Factory Commissions of 1879 and 1907, which made specific enquiries on the subject, came to the conclusion that in spite of the long hours of work, certainly not less than 12 but more often 13 and 14, the operatives in general, and women workers in particular, maintained "uniformly excellent" health. There is no reason to believe that the human species has deteriorated in physique or health by doing less work during the last half a century.

Here is what Professor Myers of Massachusetts, a seasoned and unbiassed observer of the Indian scene, says in his book: "The visitor to Indian factories, particularly in the cotton textile and jute industries, is struck by the amount of loitering which he sees in the millyards. Workers have apparently left their machines, frequently without permission, to go outdoors for a smoke, to chat or just to sit. Attempts to discipline them are either resisted by the workers with the help of union representatives or are ineffective." The same author says in another part of the book: "Indian labour is no longer cheap. Indiscipline, poor performance, inadequate managerial policies and legal requirements which limit managerial flexibility in utilizing labour make labour costs higher than hourly or monthly wage comparisons with other countries would indicate."

One might very well ask: "What is wrong in one's saying that a worker's productivity can be increased without his present workload being increased? That this is possible has been amply demonstrated." There is nothing at all wrong with such a statement taken in isolation. We are not quarrelling over the correctness of any of the individual statements; it is the one-sided emphasis placed by the Planners on management's responsibility to put its own house in order and to produce results to the exclusion of the responsibility of workers to work towards the same goal that attracts our attention. The Third Plan does not say anywhere what the worker should do to raise productivity, beyond a bare statement that "workers have, therefore, to insist on and not resist the progress of rationalization in their own interest and in the larger interests of the country." That might be their negative contribution, but what is their positive one?

Productivity is a product of many factors. It is well known, as the Second Five Year Plan reminds us, that "Steps like better layout of plants, improvement in working conditions, and training of workers could ensure increase in output without correspondingly increasing the strain on workers." We could elaborate on this by saying that work study techniques, better utilization of machinery, better maintenance of machinery, better planning of work, better tools and machines, better supervision, etc.—all these within the control of the employer—can contribute substantially to better productivity. While we must urge that all these be done, do we want the workers to be mere spectators, waiting only to take advantage of the reduced strain and the increased leisure which such efforts of the employer might bring them? The Fair Wages Committee, the principles enunciated by which have been approved even by

the Supreme Court, was clearly of the opinion[2] that the wage-fixing machinery should relate a fair wage to a fair load of work. The Committee also stated that "the written evidence received by us emphasizes the need for the institution of proper time and motion studies if production standards are to be prescribed scientifically."

It is the experience of many industrial employers that even when an addition to the existing workload is purely nominal, workers refuse to do the work and precipitate a crisis. One employer put his case like this: "I can prove to anybody that the workers working at a furnace have work only for four hours out of eight. During the remaining period, they just sit and do nothing when the furnace is doing its job. Now because of some special requirement of the furnace the workers have to lift a material and hold it in position for a short while. The total additional work involved in this will amount to, say, half an hour in the eight-hour shift. When I ask them to do this, they are threatening an instant strike." In the present state of the country's economy, it is wholly unpatriotic on the part of anyone not to do a full day's work, and those who do not demand this in full measure are themselves guilty of disservice to the country. It is the function of any Plan to give an unambiguous lead in the matter.

The President of the Employers' Federation of India has, year after year, been repeating his charge that the Central Government has been pursuing a labour policy which, by ignoring economic factors, has been adding to inflation. "What we need," he said a few years ago, "is an objective study with a view to assessing whether the country has sufficient resources to sustain a progressive wage structure or is there room for holding the wage line at certain ceilings for the time being till there is a modest improvement in the standard of living of the rural population."[3] He also pointed out that in a country with a population of 438 millions, the organized workers formed a very small percentage of the working population and that a wage policy based on principles of social justice was meant for the benefit of only this small percentage of organized workers to the total disregard of the service conditions of a very large number of unorganized workers.

Trade unionists were not slow to protest against these views but they failed to muster any strong points. They explained away why agricultural labour had not succeeded in making any progress. A typical union view was the one expressed in the *Free Press Journal* of 26 April 1961 that "if agricultural labour has not gained as much as its counterpart in the industries did, it was because its bargaining strength vis-a-vis the middlemen and traders of agricultural products has been very weak. The benefits of a higher agricultural production and prices have been swallowed by foodgrain and cotton and sugar

[2] *Report of the Fair Wages Committee*, 1949, p. 12.

[3] Naval Tata: Address to the 28th annual meeting of the Employers' Federation of India, 1961.

merchants and traders." But none of them cared to explain why the agricultural worker was not getting any assistance from the trade union movement for amelioration of his admittedly desperate predicament.

Addressing the 31st Annual General Meeting of the Employers' Federation of India on 10 September 1964, the President again summed up the situation in somewhat similar terms. Whenever higher wages were allowed by wage boards or tribunals, the additional wage bill had necessarily to come from the consumer, and the inflationary spiral of wages chasing prices was automatically set in motion. "This basic postulate seems to be lost sight of each time our Government decide on setting up subsequent wage boards for certain industries to review the wage structure recommended by a previous wage board. For example, whilst Government seems determined to freeze cloth prices, despite increased manufacturing costs, in order to hold the price line, it is intriguing to note the appointment of a second wage board in textiles." The President went on to say that industrial workers totalled no more than four millions out of the aggregate population of over 440 million and that "unlike the small minority represented by the organized workers, the bulk of the population do not enjoy the privilege of automatic neutralization of the mounting cost of living by progressive increases in dearness allowance."

Wages in the Context of Social Justice: Since the wage question is about the most important problem in the field of labour-management relations, it is necessary for the planners to give a lead to the country at least in regard to the main principles that should guide the development of the wage structure during the period of each plan. At present we have a wage-fixing procedure under the Minimum Wages Act and through the wage boards; we have also some principles of wage fixation in the report of the Fair Wages Committee; but we certainly do not have any wage policy. The workers have a simple and definite wage policy, and that is to ask for more and still more. The Tribunals generally have a "policy" of splitting the difference between what is demanded and what is offered; they believe in the golden mean. The planners do not seem to be troubled by the absence of any policy.

The plan claims that a socialist economy must reduce economic and social disparities and laments that there are "wide disparities between the wages of the working class, on the one hand, and the salaries at the higher management levels, on the other." These are not the only, in fact the main, disparities that should disturb us. If there are wide disparities in the incomes of different sections of the same wage-earning group, the heart-burning will be even more. It is here that the statistics given earlier about the numbers of industrial and agricultural labour are relevant. For the sake of comparison let us take the year 1956-57 when the Second Agricultural Labour Enquiry was conducted. Some 33 million agricultural labour wage earners supporting a total agricultural labour population of 71.72 million had a wage employment for 222 days in the year at the rate of Re. 0.96, Re. 0.59, and Re. 0.53

for men, women and children respectively. The *per capita* annual income of agricultural labour was Rs. 99.4 (20 dollars) as against the national *per capita* income of Rs. 291.5 (58 dollars) in 1956-57. In contrast, some four million industrial workers, constituting the core of the labour force of the industrial sector, earned Rs. 1,364, Rs. 1,990, Rs. 1,463, Rs. 1,659, and Rs. 1,592 (273, 398, 293, 332, and 318 dollars respectively) in 1957 in cotton textiles, petroleum products, basic metal industries, shipbuilding and electricity. It may be noted that the wages in these industries rose by substantial percentages between 1951 when the First Agricultural Labour Enquiry was held and 1956-57, the year of the Second Enquiry, while agricultural labour wages declined from Re. 1.09 to Re. 0.96 for men, Re. 0.68 to Re. 0.59 for women and Re. 0.70 to Re. 0.53 for children. If today's industrial wages are compared with agricultural labour wages, the disparity would be even more.

Let alone agricultural labour wages. The wages fixed by the various Governments under the Minimum Wages Act for workers in such industries as rice and flour mills, oil mills, lac manufactories, mica works, etc., are worth studying. In the year ending 31 December 1962, the rates fixed for rice mills varied from one rupee to Re. 1.50 per day. In lac manufactories it was Re. 1.44 to Re. 1.63 per day. In oil mills the rates varied from Re. 1.25 to Rs. 2 per day. Practically all the rates fixed by the various Governments have varied from about one rupee to two rupees (20 cents to 40 cents). Quite a number of these industries are found in urban areas.

Let us see how much an industrial worker in Bombay gets at the present time (August 1965). The basic wages and dearness allowance in several engineering concerns come to Rs. 6.00 per day for the lowest category of unskilled worker. In many of these concerns there are incentive systems of payment, and in a typical establishment, the rate of payment has been well over 50 per cent of the total of basic wages and dearness allowance for several months past. Even at 50 per cent, the incentive payment on Rs. 6.00 comes to Rs. 3.00. Thus the total daily earnings of the lowest category of unskilled worker, without counting any overtime, come to Rs. 9.00 (1.80 dollars) per day or Rs. 234 (47 dollars) per month of 26 working days. In some months, this is even more. Besides, the worker gets, even at current rates, an annual bonus equal to two to three months' basic wages. The employer contributes to the provident fund, the Employees' State Insurance Scheme, gratuity, leave, etc. If all these charges are added up, the amount per day spent on the industrial worker comes to a very large figure. The total strength of factory labour in 1961 was 3.9 millions, of which about half would be earning at these high rates. If labour in allied fields is also counted, we would be dealing with some four million workers paid at these high rates. On the other hand millions of agricultural labour, handicraft workers, workers in small and unorganized industries, and rural employees generally are getting only a fraction, perhaps one-fourth or one-fifth, of what the elite among industrial workers gets by way of remuneration.

It is not suggested that industrial labour should have no further claims to increase in wages until the lot of the agricultural worker and of the rural artisan has been improved—though even this would not be an altogether unreasonable suggestion. By all means let increases be given for fully supportable reasons, the most important of which would be increase in productivity. The best way to ensure this would be through incentive systems of payment. Dearness allowances in many cases are already linked to the cost of living—an arrangement which must be contributing in full measure to the rising inflation. Any suggestion of a curb in the extent of neutralization would be resisted by workers. On top of this automatic enhancer of inflation, wage scales are constantly being pushed up by the threat of strikes on the one hand and the invoking of the principle of comparability on the other. Unions which are strong are instrumental in pushing up wages in a few selected establishments. The rest then follow by getting Governments to refer their disputes to adjudication. Far from giving any lead to wage-fixing bodies by analyzing objectively the movement of real wages side by side with productivity and other relevant factors, our leaders have found it a popular pastime to plead for the underdog and to castigate the profit-taker and the tax-dodger in a manner that cannot but leave its impress on tribunals and other wage-fixing bodies. Labour is the worst sufferer from inflation, and as wages and prices are inter-connected, it is for the State to take steps to evolve policies and procedures to control both.

The usual explanation given by official sources for the increasing inflationary pressures noticed in Indian economy is that there is a large increase in the money in circulation reflecting the increase in governmental and non-governmental expenditure as a result of the implementation of the five-year plans. Professor Weintraub of the University of Pennsylvania, who has been studying this subject as a consultant to the National Council of Applied Economic Research, is reported to have come to a different conclusion. His report publicized in February 1965 says that the inflationary trends are due to "the disproportionate increase in wages and incomes." He explains this by saying that in his view a price level rising at about 2 per cent a year might be a desirable objective but that against this desirable rate, the wholesale price index moved by 6 per cent per annum between 1955-56 and 1963-64. He says: "The rise in the unit labour costs of over 13 per cent in the 14 years, and 23 per cent since 1955 can be alleged, with little fear of contradiction, as responsible for inflation. It has served as a cost-push on the entreprenurial side and a demand-pull on the income side." He is, therefore, convinced that "the inflationary problem in India is attributable to a wage and salary inflation. Income payments have been growing at an undue pace relative to movements in labour productivity." He suggests, therefore, the holding in check of individual income payments and the instituting of a wage-income policy.

More will be heard of this view. Already, according to a press report, the

National Council of Applied Economic Research has expressed its dissent from these views. Not all economists would be prepared to attribute inflation directly or solely to wages. Professor Galbraith says[4] that wages "have something to do with price increases." Examining the matter further, he says that the firm which advances its prices after a wage increase could have done so before, and yet it did not. "The wage increase did nothing to enable it to get the higher price." His conclusion is that "when the economy is at or near capacity, firms in the concentrated sector can advance their prices and will have inducement from advancing wages to do so." In the generality of cases he, therefore, feels that wage increases are the occasion, but not the cause, of price increases. In the particular case of the Indian economy, if press reports are correct, Professor Weintraub seems to be of the view that wage increases are not merely the occasion but the cause of the price increases and hence of inflation. A fruitful discussion on Professor Weintraub's opinion will all be to the good of planning.

It is interesting here to note that the British Government has recently (February 1965) set up a National Board in a bid to peg prices and incomes to the levels of the country's productivity. The setting up of this Board for prices and incomes, it is reported, is the second stage of the Labour Government's long-term plan for a national incomes policy. The first step was a declaration of intent on productivity, prices and incomes signed by the Government, employers and trade unions. The aim is to keep prices down so that the nation's exports can be competitive. The Government of the United Kingdom is trying out an experiment in voluntary cooperation in keeping both prices and incomes down. That an attempt to keep down wages should have been made by a Labour Government should be an eye-opener to us who have been following an incautious policy in the name of socialism.

We in India do not seem to be in any hurry to have a positive plan to keep prices and incomes down. The state of our exports has been dealt with in the section on rationalization and productivity. There it has been mentioned that our share of the world export trade went down from 2.1 per cent to 1.1 per cent between 1950 and 1960. The need to increase our competitive capacity in the international markets by reducing manufacturing costs is obvious.

On top of the steady upward pressure of wages under official blessings, the State is doing its best to pamper the small industrial labour by statutorily allocating to it as bonus 60 per cent of the surplus profits, towards which it might have made little contribution by way of increased productivity, the official policy itself aiming at avoiding any increase in workloads or any added strain on workers. If employers must needs be unburdened of so large a slice of the surplus profits without even providing for the rehabilitation of plant and machinery, can it not be put to better use by its being taken away

[4] J. K. Galbraith: *The Affluent Society*, 1958, p. 219.

as a tax and utilized for the amelioration of all sections of labour, including agricultural and artisan labour? Alternatively, would it not be better to utilize these vast amounts for housing industrial labour, a most urgent need because of the rapidly deteriorating urban conditions, than to allow them to be expended in ephemeral luxuries which directly contribute to inflation? Excessive cash payments to labour which add to inflation must be to the detriment of labour itself. The cause of productivity cannot be advanced by allowing labour to earn higher returns unrelated to productivity, and unless productivity increases, there can be no permanent improvement in the lot of labour. That is why employers have started asking what sort of a social justice it is which gives more to those that have and less to those that have not. The President of the Employers' Federation of India has repeatedly put this question to the Government but without eliciting any cogent answer. In his view industrial tribunals have been guided more by considerations of social justice than by the hard economic facts governing the implementation of the principles of social justice. The mechanical wage adjustment through dearness allowance has set in motion the spiral of wages chasing prices. Government's wage policy has, in his view, contributed to, and accentuated, the inflationary pressures from which the country has been suffering for a long time. The Government's policy, he says, is not based on social justice either. The wage policy applied to the very small sector of industrial workers is "conspicuously out of tune with the lot of the remaining hundreds of millions." He says: "The resulting disparity in the standard of living between the two sections of the population was basically a violation of the fundamental concept of the socialistic pattern of society at a time when the Government, through its taxation policy, was ruthlessly narrowing down disparities in income in respect of higher income groups. To that extent, the disparity created a form of social injustice, in that workers in organized industries were able to enjoy wages and amenities far superior to those who were engaged in other sectors."

What is Social Justice? The term "social justice" has become fashionable in quarters which have no intention of supporting their declarations by any justification or logical reasoning. Why is Employer *A* asked to yield up a certain concession? Because, we are told, social justice must be done to the under-privileged. But one may legitimately ask: what is social justice? How much of it should be done? To which of several groups of the under-privileged should it be done? Nobody knows the answers to these questions and yet the more ignorant the asserter, the more ardent is his advocacy of social justice.

In contrast, the following frank admission is refreshing: "....We hear much today of social justice. I am not sure that those who use the term most glibly know very clearly what they mean by it. Some mean distribution, or redistribution of wealth; some interpret it as 'equality of opportunity'—

a misleading term, since opportunity can never be equal among human beings who have unequal capacities to grasp it; many, I suspect, mean simply that it is unjust that anybody should be more fortunate than themselves; and the more intelligent mean that it is just that every effort should be made at least to mitigate the asperities of human inequality. . . ."[5]

The higher courts have often used the term 'social justice' but have carefully avoided telling us what they mean by it. The Supreme Court had this to say in a case:[6] "Social justice is a very vague and indeterminate expression and no clear-cut definition can be laid down which will cover all the situations. . . . Without embarking on a discussion as to the exact connotation of the expression 'social justice', we may only observe that the concept of social justice does not emanate from the fanciful notions of any particular adjudicator but must be founded on a more solid foundation."

The Madras High Court said:[7] "Concepts of social justice have varied with age and clime. What would have appeared to be indubitable social justice to a Norman or a Saxon in the days of William the Conqueror will not be recognized as such in England today. What may appear to be incontrovertible social justice to a resident of Quebec may wear a different aspect to a resident of Peiping. If it could be possible for Confucius, Manu, Hammurabi and Solon to meet together at a conference table, I doubt whether they would be able to evolve agreed formulas as to what constitutes social justice. No definition exists of concepts of 'social justice', which is a very controversial field. . . .But so far as courts and tribunals are concerned, the important thing is that they are bound by the law as it stands and must give effect to it. They cannot ignore the law by rhetorical appeals to undefined and contentious concepts."

But these difficulties do not deter our planners and politicians from bandying about the term 'social justice'. The First Five Year Plan, which claims to have laid the foundations of all future planning, says[8] that "in a community organized for social justice and the good of all its members, there would be a constant reconciliation of the interests of all sections and no legitimate occasion for a group to interfere with production or disorganize the life of the community should arise." There are, of course, references in the Plan to things like equal opportunities for all, reduction of inequalities, etc., but when one has gone through all the numerous references to social justice in the Plan, one is endowed with no greater knowledge of what social justice is than that it is presumably what Government is now doing.

The elusive concept of 'social justice' must have undergone a metamorphosis by the time it emerged as the 'socialistic pattern of society' in the

[5] Allen: *Aspects of Justice*, p. 31.
[6] Muir Mills Ltd. *vs*. Suti Mill Mazdoor Union, 1951 I. L.L.J. 1.
[7] Sridharan Motor Service, Attur *vs*. Industrial Tribunal, Madras, 1959 I. L.L.J. 380.
[8] *First Five-Year Plan*, 1952, p. 572.

Second Five Year Plan. The cardinal tenets of this new-looking faith were spelt out as (*i*) social gain rather than private profit as the result of the Plan's endeavours, (*ii*) appreciable increases in national income and employment, and (*iii*) greater equality in incomes and wealth. These are all noble sentiments, but would the bringing about of such a society require the Governmental machinery to concentrate all its efforts in boosting up a small urban labour by every imaginable means while leaving untouched the desperate predicament of the numerous millions of rural labour?

The urgent need of the country in present-day conditions is a substantial and steadily-growing rate of productivity. Management, labour, and Government have all, in their different ways, to contribute towards it. Both management and labour must be urged to contribute their full quota, and it is for the State, which has taken over the task of planning, to make this clear in unequivocal terms. The declarations contained in the Plan do not conform to this requirement.

State Policy and the Constitution: Against this background of a considerable measure of confusion and vagueness in Government's labour policy, it would largely be unprofitable to enquire how far the Government has succeeded in implementing the Directive Principles of State Policy contained in the Constitution in so far as they relate to labour. Directive principles, though not enforceable in a court of law, are nevertheless "fundamental in the governance of the country." Article 37 of the Constitution declares that "it shall be the duty of the State to apply these principles in making laws." The State has, therefore, to exert its utmost in achieving the objectives of the directive principles.

Article 38 expresses the overall objectives of the directive principles, namely, to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all the institutions of the national life. The structure of this social order is then spelt out in the subsequent articles. Under article 39, the State has to endeavour to secure that there is equal pay for equal work for both men and women and that the health and strength of workers, men and women, and the tender age of childhood and youth are protected against exploitation. Under article 41, the State shall, within the limits of its economic capacity and development, make effective provision for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. Humane conditions of work and maternity relief are to be provided for under article 42. Under article 43, the State is called upon to secure to all workers—agricultural, industrial or otherwise—work, a living wage, and conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities.

Thus apart from legislation aimed at the removal of abuses and protection of vulnerable groups, the directive principles are concerned primarily with the

ensuring of a living wage to all workers, including agricultural and non-industrial workers, the securing of full employment to all, and the development of social security measures consistent with the economic capacity and development of the State.

It is in implementation of these directive principles of State policy that the Government has set its goal on a socialistic pattern of society and embarked on the formulation and execution of all-pervasive five-year plans. So far as urban industrial labour is concerned, much has been done, through legislation, to ensure safe and humane conditions of work. A beginning has been made in the matter of social security also. Provident fund schemes to provide for security in old age have been pushed vigorously among urban industrial labour. Government's efforts to secure to all full employment and a living wage have, however, not been particularly successful. Agricultural and rural labour have been the worst sufferers in this respect. Very low wages and frequent unemployment have been their lot. Even the very low minimum wages, which would hardly reach the bare subsistence level, fixed by State Governments for agricultural labour, have not been effectively implemented. The absence of a cogent policy embracing all sections of labour and the comparative neglect of all but urban industrial labour are indicative of the weak support given by governmental action to the directive principles. The extent of the gap between obligations and fulfilment is particularly glaring in the State's handling of the weaker and more docile sections of labour. In any objective assessment of policy a point that will need particular scrutiny is whether the Government has devoted to the vast millions of non-industrial labour even a fraction of the considerable amount of care and attention it has bestowed on the comparatively small urban industrial labour and whether this is consistent with its constitutional obligations to the weaker and less privileged sections of the public.

Collective Bargaining—the Ultimate Goal: We started the last chapter by saying that trade unions symbolized industrial democracy and that an acknowledged way in which trade unions could cooperate with managements without compromising their independence was through collective bargaining. In effect, therefore, collective bargaining is the technique through which industrial democracy works.

There is, on the whole, consensus of opinion that so long as compulsory adjudication is available for the settlement of industrial disputes, collective bargaining will not take root and grow. Professor Charles Myers of Massachusetts who examined the problem of adjudication versus collective bargaining, however, felt that the reasons given for the retention of compulsory adjudication in India "in the near future" were more compelling than the reasons advanced for scrapping it. He wrote this some six or seven years ago. He added that "it ought to be realized, however, that once a country adopts compulsory adjudication, it is not easy to reverse the pattern and move to

freer collective bargaining." That is so, and if the State has any intention of turning completely to collective bargaining even in some distant future, the gradual change-over from adjudication should start as early as possible.

Another American expert, who too spent a considerable amount of time in India studying labour-management relations, Van Dusen Kennedy of the University of California, was more positive in his support of collective bargaining even under present-day Indian conditions. He said: "No bargaining is possible unless union and employer each knows that the other is prepared and able to back up his position if put to the test. The only ultimate test is work stoppage. And since some serious differences between unions and employers are inevitable, some tests are bound to occur. If India, as a matter of policy, puts more value on avoidance of work stoppages, whatever the cause, than on collective bargaining, then I believe true collective bargaining will never replace adjudication."

Kennedy met the two main objections often raised to the replacement of adjudication by collective bargaining. To the objection that Indian unions were too inexperienced and the outsider leaders too influenced by ulterior motives to be entrusted with the responsibility for collective bargaining and that demands might be exaggerated and strikes might increase, his answer was that Indian trade unionists were quite capable of viewing their responsibilities soberly. In any case he felt that the best cure for irresponsibility in unions, as western experience showed, was to give them responsibilities in the form of effective bargaining rights. To the second objection that the Indian economy could not afford to have strong unions turned loose in free collective bargaining to make exorbitant demands, his reply was that weak unions denied bargaining rights and torn by unregulated rivalries made more extreme demands than strong bargaining unions.

The Director-General of the I.L.O. wrote in his report on labour relations to the 45th session of the International Labour Conference in 1961: "As workers and employers gain experience and confidence in their strength and ability to bargain collectively, they often avoid bringing the statutory machinery for conciliation, mediation or arbitration into play, and prefer to settle their differences between themselves without interference from outside. Though this may frequently result in long-standing disputes with strikes and other forms of direct action, especially when full freedom to negotiate is restored prematurely, the experience of industrialized nations shows that the method is likely to be beneficial in the end."

Shri V. V. Giri, Central Labour Minister, said in his address to the 12th session of the Indian Labour Conference: "I am afraid I cannot conceal my disappointment at the thought that the principle of compulsory arbitration, introduced for the first time as a result of war-time exigencies and continued thereafter as a measure inevitable in a period of economic uncertainty and emergency, has given a great set-back to the growth of trade unionism in the country. The spirit of self-confidence and self-reliance engendered by

healthy bargaining has given place to the habit of importunity and litigation. That is bad enough; but what is worse is the deplorable effect that this dependence on a third party has brought about in the outlook and attitude of the parties towards each other.... It may be that until the parties have learnt the technique of collective bargaining, there are some unnecessary trials of strength, but whoever has heard of a man learning to swim without having to drink some gulps of water? .... It has, therefore, been my firm conviction all these years that internal settlement of disputes is eminently to be preferred to compulsion from outside and that collective bargaining and voluntary arbitration should be encouraged in preference to compulsory arbitration." With these views the present writer is in respectful agreement.

It is often suggested that if compulsory adjudication is withdrawn, there will be a spate of strikes which would injuriously affect all planning. The following view of the Director-General, I.L.O., should be sufficient to dispel this unwarranted apprehension: "...by comparison with the thousands of settlements freely negotiated between the unions and the employers, they (strikes) are relatively infrequent. Also their economic consequences are sometimes exaggerated. In reality they account for only a small proportion of the working time lost to the economy. For example the decision to regard a normal working day as a national holiday generally causes a greater loss of production than a year's labour disputes."

Three conclusions emerge from the foregoing examination of the merits of collective bargaining as compared to those of compulsory adjudication, namely, (*i*) that in a political democracy practising industrial democracy, collective bargaining should be the king-pin of adjustment of labour-management relations, (*ii*) that the earlier the policy of compulsory adjudication is reversed to that of collective bargaining, the better for the success of collective bargaining, and (*iii*) that the transition from compulsory adjudication to collective bargaining can be planned in such a way that the one is withdrawn and the other introduced, not sharply at one point of time but progressively over a period of time.

We often hear the advice: "Don't follow the West blindly." We certainly should not do so, but at the same time we should not refuse to follow the West either under the mistaken notion that our problems are different from theirs or with a view simply to establishing our ability to forge ahead on our own. Arriving somewhat late on the industrial scene, we have necessarily had to follow many of the ways of the more industrialized nations; the march of progress the world over has left us with no option but to fall in line with activities characteristic of the modern world. So we have adopted the democratic republican pattern for our State and a system replete with trade unions, strikes, lock-outs, industrial protests, and so on in the field of labour-management relations. When we have fitted ourselves so closely into the Western mould, we cannot pretend that a certain part of that mould does not suit us. We would only look ridiculous in a patchwork of the West and the East.

The only large-sized country where compulsory adjudication has proved a success is Australia, but the conditions in Australia are quite different from those in India. The population of Australia is but a small fraction of the population of India. When India really industrializes herself, the size of industry and the size of the attendant labour-relations problem will be colossal as compared to those in Australia. We expect the volume of our industrial production to go up many times in the next two or three decades. If then we are going to provide industrial tribunals to cope with the progressively rising volume of industrial disputes and grievances, adjudication will be our main national preoccupation, for which we would be devoting so much of our time and attention which could more profitably be turned to problems of national development. It is far better not to nationalize labour-management relations to such a vast extent but to leave them in private hands as far as possible.

There is a school of thought which believes that the goals of building up sound industrial relations in accordance with the traditional methods of collective bargaining, backed by sanctions, would need to be sacrificed due to the competing objectives of economic growth if not of political stabilization. This was evident even in the First Five Year Plan which contained the statements:[9] "In an economy organized on the basis of competition, private monopoly or private profit, the workers' right to have recourse to peaceful direct action for the defence of their rights and the improvement of their conditions cannot be denied and should not be curtailed unduly.... An economy organized for planned production and distribution, aiming at the realization of social justice and the welfare of the masses can function effectively only in an atmosphere of industrial peace. India is moving in this direction. It is also at present passing through a period of economic and political emergency. Taking the period of the next few years, the regulation of industrial relations in the country has to be based on these two considerations and it is incumbent on the State to arm itself with legal powers to refer disputes for settlement by arbitration or adjudication, on failure of efforts to reach an agreement by other means." The policy of the Government has thus been that the country cannot afford work stoppages in the interests of economic development and that the State must take steps to ensure this even if it means interference with the recognized processes of labour-management adjustment.

In regard to the role played by the Governments of developing nations in shaping labour-management relations, the Director-General of the I.L.O. says: "Economic development depends on increased domestic capital formation and higher productivity. This means, in turn, that some limits must be placed on increases in consumption for all groups of the population; and that new and more efficient methods of organising work, which may affect

[9] *First Five-Year Plan*, 1952, p. 572.

the jobs, need to be introduced. At the same time, the Government must allow for the need to create new jobs, and thereby reduce unemployment and under-employment and provide for an expanding labour force; and it cannot allow entrenched positions of particular groups to prejudice the general expansion of employment. Governments in developing countries necessarily strive to spread the momentum of growth and this involves some restriction on the rewards of those, employers and workers alike, engaged in the more dynamic sectors in favour of stimulating growth in the more backward regions."

Let us pause here and see how far these typical trends can be identified in our own case. True, limits have been placed on increases in consumption for all groups of the population, directly through taxation and indirectly through high prices and inflation. New and more efficient methods of organizing work, which might affect the jobs, have been very slow to make their appearance. There has been considerable resistance, abetted often by Governmental authorities themselves, to the introduction of efficient methods of organizing work as these invariably affect, in the short run, the quantum of jobs. Modernization, rationalization and technological progress have suffered in the process. Both employers and workers have generally cooperated with the Government in the expansion of employment opportunities, though it is a fact admitted by the Government that unemployment has increased with each succeeding Plan. As to the observation of the Director-General that the measures taken by developing countries involve some restrictions on the rewards of those, employers and workers alike, engaged in the more dynamic sectors in favour of stimulating growth in the more backward regions, the trend in India has been different. Workers in the dynamic sectors of industry have gained appreciably and perhaps even disproportionately while those in the handicraft and rural sectors have had to put up with low and stagnant levels of remuneration in the face of a steadily rising tempo of prices. All these indicate that notwithstanding the requirements of planning, the Government has been pushed into particular positions by the power of the clamorous groups.

The Director-General proceeds to say that the Governments of developing nations "may be intolerant of labour disputes which impede development or of claims by individual groups of workers or employers who are already privileged by comparison with other groups in the population."[10] True the Government of India has been intolerant of labour disputes but only when employers in the private sector could be made to yield up the demands of workers. But the Government has shown no signs of any great intolerance when vast numbers of workers have impeded development, and almost paralyzed public life, by holding what are essentially political strikes and demonstrations as in the Bombay Bandh, the Bonus Bandh, etc. Again, the Government has shown no intolerance of claims continually put forward by

[10] I.L.O.: *Report of the Director-General - Labour Relations*, 1961, p. 14.

urban labour which, by all accounts, is far better off than the vast mass of rural labour. On the other hand the Government's response to the threats of urban labour has been prompt; the Government is continually engaged in creating one wage board after another. A second round of wage boards has already started in textiles, banks, working journalists, etc. On top of all these efforts to push up the wage bill of urban labour, the Government has not been slow to give its support to a resolution passed at the 22nd Session of the Indian Labour Conference in July 1964, which says that dearness allowance should be suitably linked with the cost of living index. That such an arrangement adopted on a national scale might greatly enhance inflation does not seem to worry the Government. Barbara Wootton says in her well-known 'The Social Foundations of Wage Policy' that "the determination to adjust wages to a rising cost of living involves a circular process. It is an inflationary device of consummate efficiency."

We have said elsewhere that the fear of a large spate of strikes in the absence of State control over industrial disputes is largely imaginary and that the experience of countries relying primarily on collective bargaining is no worse than that of countries which have placed the power of intervention in the hands of the Government and of authorities set up by the Government. It is the view of experts that the cause of development itself requires that trade unions should be enabled to grow and function in a normal and healthy manner without the strangulating effects either of governmental control or of the 'outsider' chaperonage. Dr. Eugene Staley, of the Stanford Research Institute, says:[11] "Free trade unions, competently led and dedicated to a philosophy which gives them a developmental outlook, are an important part of the institutional basis for a dynamic, modern economy in a democratic society.... In default of healthy unions of this type, communists or others with ulterior motives are likely to dominate the labour movement. Even if they do not succeed in using their control of the unions as a stepping-stone to complete power, such a situation will surely put many obstacles in the way of democratic, economic and political advance. The development of free and constructively led trade unionism is one of the very important problems of institution-building in under-developed countries." It seems unnecessary to elaborate on the point that planned development on a long-term basis demands the bringing into existence of a trade union movement which will be independent alike of the employer and of the Government and will be able to function in a truly democratic way free from the shackles imposed by an over-nervous Government.

It is obvious then that if the industrial relations system must develop democratically and in a way conducive to long-term planning, it must be based primarily on collective bargaining and only to an inescapably small extent on compulsory adjudication. By this process we shall be building up not only

[11] Eugene Staley: *The Future of Underdeveloped Countries*, 1954, p. 244.

industrial democracy but mature political democracy, for no democracy can be well-founded if it does not rest on responsibility and the ability to get on with others.

There is no need for the transition from compulsory adjudication to collective bargaining to be abrupt. We have suggested elsewhere that the complete elimination of outsiders from the executives of unions might be achieved gradually in two stages over a period of ten years. This is a sufficiently long period for progressively effecting a change-over from adjudication to bargaining. Legislation will have to be undertaken for the purpose.

Scope for Adjudication: The position at the end of the period of transition should be that compulsory adjudication will be available only in what may be called economically important industries and in public utility services. Every industry is, in a sense, important to the economy of the country, for otherwise it would not exist at all, but that is not the sense in which the expression "economically important" is used here. For the purpose of protection through compulsory adjudication in the matter of settlement of industrial disputes, the industry must be so important, in fact so strategically vital, to the economy of the nation that a strike or lock-out in the industry might cause widespread dislocation of the execution of the five-year plans and substantial damage to the general economy of the nation. For instance, the iron and steel industry would be such an industry, for a prolonged strike might lead to a slowing down of the implementation of the five-year plans, but not the bicycle or sewing machine industry. The cotton textile industry could perhaps be included in this category but not the silk, rayon or even the woollen textile industry. The precise list of economically important industries will have to be drawn up carefully having regard to the objectives. The public utility services are well known; there is already a definition in the Industrial Disputes Act. Except for these two categories of industries, adjudication, or an equally effective alternative remedy, should be available only in cases in which there is *prima facie* evidence of the commission of an unfair labour practice as defined in the law. This limitation will exclude from the purview of adjudication the large majority of individual grievances. Only those grievances in which victimization, resulting from unfair labour practices, has been practised will become eligible for adjudication. If a special agency is created for administering the law relating to unfair labour practices and representation, that agency will deal with cases of victimization, which will then not have to be sent for adjudication.

If adjudication is severely limited on these lines, all grievances barring victimization and the bulk of industrial disputes will remain outside the pale of compulsory adjudication. It will then immediately be necessary to develop a proper grievance procedure for taking care of grievances and a proper system of collective bargaining for taking care of the bulk of industrial demands and disputes.

As a matter of convention, but not of law, the grievance procedure must provide for voluntary arbitration as the final step in the process of adjustment. Every establishment should be persuaded to have such a procedure. Preferably even the details of the procedure for voluntary arbitration, including the choice of the arbitrator, should be settled beforehand and incorporated in the agreement relating to the grievance machinery. Most employers are likely to cooperate in evolving a suitable grievance machinery; the few recalcitrants will learn their lesson from the attendant labour troubles.

The collective bargaining of substantive industrial problems and disputes may not necessarily end up in voluntary arbitration. In disputes relating to wages, bonus, and other matters having widespread financial repercussions, many employers may not be willing to surrender their financial future to a neutral third party who, however eager and willing, may not be able to project himself into the position of the employer to take stock of business prospects and possibilities. The majority of such disputes must, therefore, necessarily end up either in an acceptable settlement or in direct action. A proportion of contract disputes may be referred for voluntary arbitration, but that would be a matter of convenience in particular cases rather than of conviction.

Even in industries and employments in which adjudication would be available under the proposed arrangements, references to adjudication should be justified by the merits of the situation. As the intention is to encourage the parties to come to a mutual settlement wherever possible, there should be no undue readiness on the part of the authorities to refer disputes to adjudication. In certain situations adjudication should not be ordered. Where a party has resorted to an illegal strike or lock-out, adjudication should not be ordered even where the merits of the claim might otherwise have justified such reference, until the illegal strike or lock-out has been called off. Where certain issues have already been adjudicated on by a court or tribunal, there would be no justification for referring the same issues in a different establishment to adjudication unless the employer refuses to make offers in line with the decisions of the court or tribunal. Issues relating to recognition or to union security such as closed shop, union shop, maintenance of membership, etc., would also not be suitable for adjudication. Recognition is best regulated by a specific law on the subject, while union security provisions should more appropriately be settled in negotiation between the employer and the union. Old disputes, that is disputes brought to the notice of governmental authorities more than a year from the time the cause of grievance arose, should also ordinarily not be referred for adjudication. If unions were allowed to dig up old grievances, the peace of the employer might well be mortgaged for years to come. It would be an advantage to give a list of disputes which should not be referred for adjudication in the law relating to adjudication, so that all concerned, including the authorities responsible for making the reference,

may know precisely the type of disputes which should not be referred for adjudication.

Types of Tribunals: So long as compulsory adjudication is to be confined to economically important industries and public utility services and discretion is to be exercised in referring for adjudication only really important collective disputes, there is no need to provide for too many gradations of tribunals or labour courts. There will have to be two types of tribunals, one set up by the State Government (or more correctly the appropriate Government) for dealing with disputes within the State (or equivalent jurisdiction) and the other set up by the Central Government to deal with disputes affecting establishments situated in a number of states. But whether the tribunal is a State tribunal or an all-India tribunal, it will be of the same prescribed calibre and standing. The all-India tribunal should not be looked upon as a higher tribunal than the State tribunal; it is simply a case of the area covered being wider in one case than in the other.

If statutory adjudication is at all provided for, it is now widely recognized that there should be provision for appeals from the awards of tribunals.

The Supreme Court and the High Courts have certain types of jurisdictions over the awards of industrial tribunals. A facile remedy suggested in certain quarters for eliminating delays and suspense is to abolish these jurisdictions of the higher courts. Apart from the fact that any such suggestion would necessitate amendment of the Constitution, it is clearly not in the interest of the country as a whole that these jurisdictions should be done away with. Numerous courts and tribunals are constantly being set up under special laws, and there is every possibility that in the early stages of the functioning of these bodies, when concepts and conventions are in the process of development, the decisions of these bodies might turn out to be not only wrong but unjust. It is all to the good that the highest courts of the land, in which the public repose implicit confidence, are available to entertain complaints of injustice. Being courts of ultimate correction, the High Courts and the Supreme Court do not exercise functions analogous to those of an ordinary appellate court. A tribunal's findings on facts are generally final. The Supreme Court, exercising appellate jurisdiction by special leave, will not ordinarily interfere with conclusions of fact. It would exercise jurisdiction only in cases in which a tribunal acts in excess of jurisdiction or fails to exercise a patent jurisdiction, where there is an apparent error on the face of the decision, or where the tribunal has erroneously applied well-accepted principles of jurisprudence. In other words there must be violation of the principles of natural justice, causing substantial and grave injustice to parties, or an important principle of industrial law requiring elucidation and decision before the Supreme Court can be persuaded to intervene. While the Supreme Court can substitute its own judgment for that of the tribunal, the powers of High Courts are limited to quashing an award and giving further direc-

tions in the matter. High Courts cannot substitute their own decisions for that of the tribunal. High Courts would issue writs of certiorari only where a tribunal acts in flagrant disregard of the rules of procedure or violates the principles of natural justice.

The Law Commission quoted facts and figures to show that the number of appeals by special leave to the Supreme Court had increased considerably after the abolition of the Labour Appellate Tribunal. One of the reasons why trade unions campaigned for the abolition of the Appellate Tribunal was that appeals took too much time and delayed the final settlement of industrial matters unconscionably. The time taken for the disposal of an appeal in the Supreme Court is very much more than the time taken by the Appellate Tribunal. Thus the disease has in fact been aggravated by the easy remedy sought by unions. Moreover the cost of prosecuting or defending an appeal before the Supreme Court is several times that of the cost before the Appellate Tribunal. It is often said that the settlement of industrial disputes should be both speedy and inexpensive. Any development that will lead to an increase in the number of appeals before the Supreme Court must, therefore, act adversely to the interests of labour.

The abolition of the Labour Appellate Tribunal has led to discontent in the ranks of employers. Though the number of appeals by special leave to the Supreme Court has increased, that is only a fraction of the appeals that would have been filed before a regular Appellate Tribunal. The majority of applications for special leave are rejected. The Supreme Court has made it abundantly clear that it will not interfere with findings on facts and that it will interfere on points of law only if it is convinced that a serious miscarriage of justice will otherwise result. From time to time the Judges of the Supreme Court themselves have remarked in open court that the points raised by Counsel would have been appropriate in a regular appeal but not in an appeal by special leave with all its attendant restrictions and limitations. The result is that though employers often feel strongly about an award which they consider unjust, they feel compelled to submit to the award as petitioning the Supreme Court would only add to their financial burden without securing any hearing. When workers are not satisfied with an award, they have various ways of expressing their discontent, whether these be proper or improper, legal or illegal, but an employer has no alternative but to suffer silently. A resentful suffering does not contribute to good labour-management relations.

All this points to one definite conclusion, namely, that when a party is compelled to submit to a judicial or quasi-judicial proceeding, the least that that party should be allowed is to have a right of appeal. It is no argument at all in this context for anybody to take the plea that appeals will delay the settlement of an industrial dispute and that what is needed in labour-management relations is quick and ready justice. The way to quick justice is by way of collective bargaining, for there will be no appeal from an agree-

ment. Similarly voluntary arbitration, freely agreed to by the parties for any or all industrial disputes that might arise, will lead to the same result.

If an appellate tribunal is again set up, the number of cases ending up in the Supreme Court will definitely go down, and the Supreme Court itself will be more inclined to refuse permission to appeal by special leave than if there had been no appellate tribunal. Official quarters often appeal to, and persuade, the parties not to resort to proceedings in the High Courts and in the Supreme Court. Employers and workers are advised to set up their own internal screening machinery and to decide whether a particular matter should be taken to the higher courts. Attempts such as these do not take into account human psychology. One cannot force people up to a point and then say: "Please co-operate; let there be voluntary restraint in further proceedings." If there is compulsion at the beginning, it is unreal to expect cooperation at the end. It must be either compulsion or cooperation throughout. So if a system of settlement of disputes is built around compulsory adjudication, there must be provision for regular appeals; any appeals to sentiment that parties should not go to the High Courts and the Supreme Court would be grossly unfair. It is for the State to set up arrangements which will automatically dissuade the parties from going to the higher courts. An effective forum for appeals will be one such arrangement.

The question has often been raised whether tribunals should be *ad hoc* or standing. The large majority of tribunals now functioning in the country are mostly *ad hoc*. There are, however, some in big cities like Bombay and Calcutta which function continuously. The main objection to a standing tribunal frequently urged is that in the field of industrial adjudication the acceptability of the tribunal to the parties is important. A tribunal in which one or both of the parties have lost confidence is, it is said, not the most appropriate authority to consider matters which may have serious financial repercussions. The presiding officers of industrial tribunals soon develop personalities, are identified as pro-labour or pro-management, and become the objects of likes and dislikes. A party which has a weak case shuns a judge whose previous record spells disaster to its stand and prefers to have an "unbiased" judge. It is clearly undesirable to take cognizance of this kind of argument, which, if permitted to be extended to ordinary civil and criminal matters, cannot but lead to chaos in the administration of justice. Individual judges often acquire a specific image in the public mind. Mr. *A* is a convicting judge; the criminal dreads him and sees the picture of the gallows or of the dark dungeon glaring at him long before his case is called. Mr. *B* is a judge who invariably sides with landlords against tenants; a tenant faced with eviction tries his best to have the case heard by some other judge. Mr. *C* never agrees to a divorce, whatever the circumstances; he is so old-fashioned that suffering females detest him. And so on and so forth. If the prejudices of litigants were allowed to threaten the functioning of courts and tribunals, we would soon be left with no acceptable judge.

The disadvantages of having purely *ad hoc* tribunals, which come and go, are several. The economic matters coming up before industrial tribunals for adjudication are often both difficult and intricate. Concepts such as social justice, standards of living, fair and living wages, capacity of industry to pay, job evaluation, workloads, incentive systems of payment, relationship between production and wages, etc., are not easy to grasp and will make little impression on an *ad hoc* tribunal hearing a case for the first time. Experience alone can teach one the significance of these terms in a given set of circumstances. It is only standing tribunals that can get the opportunity to specialize in complicated economic problems.

There are, therefore, considerable advantages in setting up a permanent tribunal of adequate size in each State and in the Central sphere. The tribunal may consist of one or more members. In a multi-member tribunal, one of the members may be designated Chairman. While industrial disputes will ordinarily be adjudicated upon by a single member of the tribunal, it should be permissible for Government to refer particularly important disputes to a bench of three members for adjudication.

All-India tribunals, corresponding to the present national tribunals, will be constituted only for important disputes affecting establishments in more than one State. They will necessarily have to be constituted *ad hoc*, but their members should be drawn from among Standing Tribunals of the Centre and of the States so that they will be experienced persons fully conversant with economic issues.

Where a tribunal consists of only one member, there are advantages in a judge being appointed to fill that post. A judicial bent of mind is valuable for assessing different situations and making awards that would appear fair in the eyes of the contestants. In a multi-member tribunal, however, there are considerable advantages in having as members some with social, economic or industrial background. Such persons working with judges will, in course of time, pick up the essential legal procedures needed for industrial adjudication. Their great advantage would lie in their knowledge of social and economic problems and in their ability to deal with disputes pertaining to economic issues. A multi-member tribunal will, therefore, have at its command specialized knowledge in different fields which will enable it to tackle even intricate questions. In the highly-industrialized States, it would be an advantage to have as the Chairman of the tribunal a sitting or retired High Court Judge, but Chairmen in other States should be at least retired District Judges. There should be provision for a tribunal to be assisted by assessors who may have special knowledge of the matters under adjudication. Besides, tribunals should be allowed the assistance of economists, accountants and similar experts wherever necessary.

Tribunals should command confidence and respect. They must have status and independence comparable to those of the higher civil courts. The practice hitherto has been for the Central and State Governments to appoint members

of industrial tribunals. This means, in fact, that the power of appointment rests largely with the Labour Minister concerned. There have been criticisms that as tribunals are *ad hoc* and the power of appointment is vested in Labour Ministers, members of tribunals are amenable to influence exercised by or through Labour Ministers. Most tribunal members are retired judges seeking re-employment at a period of life when re-employment opportunities are few. If their tenure of appointment is fixed at one year each time, their anxiety to please their paymasters cannot be brushed aside as yet another unfounded allegation of people out to discredit ministers. In any case, even where there has been no overt exercise of influence, tribunal members are apt to be influenced by the outlook and approach of the Labour Minister to whom they owe their jobs and whose continued approval of their performance is necessary for extension of the periods of tenure of their offices. Many employers, therefore, genuinely entertain the apprehension that all or most of the tribunals are wholly pro-labour and anti-employer. The tendency so often noticed on the part of tribunals to play safe by splitting the difference, without any logical support to their findings, lends some weight to that apprehension. Employers as a class have, therefore, great doubts about the impartiality and objectivity of industrial tribunals. Whether they are justified in entertaining such a feeling is beside the point; what is more important is that that feeling colours their participation in adjudication proceedings. Any step that will restore the confidence of employers in tribunals without destroying that of workers will go a long way towards making compulsory adjudication more acceptable than it is today.

One way of ensuring this is for Government to evolve a procedure for the appointment of members of tribunals somewhat similar to the procedure for the appointment of High Court Judges. The precise arrangements need not be noticed here, but it should be stressed that the appointment of members of tribunals should receive the approval not only of the appropriate Government but of, say, the Chief Justice of the High Court. Moreover, the responsibility in Government for making the appointment could be vested in the Judicial Department rather than the Labour Department. If the appointment is of a member, other than the Chairman, of a multi-member tribunal, it would be useful for the State Government to seek the advice of the Chairman about the suitability of a candidate for appointment. As all tribunals, other than all-India tribunals, will be standing tribunals, all appointments of the Chairman and members of a tribunal should be either permanent or at least for a reasonably long period, say, five years. Tribunal members should not be left in suspense about their appointment every year. Tribunal members should not be removable from their posts except with the concurrence of the authorities which gave their assent to their appointments. They should be "neutral" persons, not classifiable as either pro-labour or pro-management.

The setting up of a high-powered Labour Appellate Tribunal is, as mentioned above, imperative so long as compulsory adjudication exists in

any form or to any extent. The financial consequences of an award to an establishment may amount to many lakhs of rupees every year, and in the case of very big establishments even to a few crores, the burden being a permanent and recurring one. In an ordinary money suit of a few thousand rupees there are appeals, often several, to higher courts, but in an industrial adjudication, there is at present no appeal at all even if the newly-created annual burden runs to many lakhs. This is partly due to the common tendency to look at awards by the measure of the individual directions rather than by the totality of their financial consequences. The increase in the daily wages of an employee by half a rupee or in the annual bonus by a month's basic wages is something which goes completely unnoticed until the annual burden to the establishment is worked out to the staggering figure of many lakhs of rupees. In the course of assessment of the establishment's capacity to pay, tribunals are expected to assess the annual burden of the proposed award and to examine carefully how that burden will affect the annual expenses and profits and the reasonable expectations of the investing public. But it is seldom that such an assessment is ever made by a tribunal. Even all-India tribunals, the awards of which are applicable to establishments throughout the country, have, in the past, failed to discharge this responsibility, and it was on this ground that the fixation of wages and salaries, by a statutory wage board, for the working journalists all over India was set aside by the Supreme Court in the appeal filed by the Express Newspapers. Some people take the facile view that as awards are of comparatively short duration and conditions on the economic front change rapidly, it would be unreasonable to waste much time over appeals. This argument is wholly untenable. First, awards are not of such short duration as is often made out. The appropriate Government can extend the duration of awards to a maximum of three years, and awards continue to be binding even thereafter until they are terminated after due notice. Moreover case law has firmly established the position that notwithstanding the termination of an award, the benefits that have accrued under the award cannot be withdrawn. The only effect of the termination of an award is that a party failing to abide by the terms of the award does not incur the penalties provided in the Industrial Disputes Act. The passing of an award has the effect of imposing a statutory contract governing the relations of the employer and the employee. That contract does not cease to be effective on the termination of the award. Secondly—and this is far more important—the obligations piled upon an employer by an award are, like the bricks that go to make an edifice, placed permanently on him and will not be removed in a subsequent adjudication. The employer's burden thus goes on increasing award after award. For both these reasons it would be positively misleading to say that the effects of an award are of short duration and that too much time should not be devoted to a meticulous settlement of each award.

The objection to the Labour Appellate Tribunal on the ground that ex-

cessive delays would occur in the final settlement of a dispute is an objection to the very system of compulsory adjudication rather than to the Appellate Tribunal itself. Compulsion can be ordered only subject to certain safeguards, of which the right to appeal is the most important. If there is to be no appeal, it is only fair to say that there should be no compulsory adjudication. The responsibility for delays cannot be laid wholly or even largely at the door of the Appellate Tribunal. In most cases the original adjudication takes much time as written statements, documents and exhibits have to be filed at various times and evidence recorded. Comparatively appeals are disposed of in much less time as when once the appeal comes up before the appellate body, the case is heard completely in one sitting. Objections to the Appellate Tribunal on the ground of delays are, therefore, not convincing. The only way to avoid law's delays is for the parties to take the matter in their own hands and to arrive at a solution by collective bargaining.

Voluntary Arbitration: Enough has been said in an earlier chapter as to why the propaganda in favour of voluntary arbitration by the Labour Ministers of the Centre and of the States and the I.N.T.U.C. has not produced the expected results. The Code of Discipline solemnly bound employers workers, and Governments to prefer voluntary arbitration to compulsory adjudication, but even the Central Government, in its capacity as employer in the public sector, has not cared to accept voluntary arbitration. The President of the I.N.T.U.C. came direct to the point when he said in 1960: "If the Government as employer will not agree to abide by the Code of Discipline and submit to voluntary arbitration all unresolved disputes, it can have no face to approach the private sector and compel it to honour the Code." If voluntary arbitration has not caught on, there must be some reason for it, and after six years of expectation and exhortation, it is incumbent on us to seek a rational explanation. Voluntary arbitration will come about only when both parties to a dispute voluntarily desire such a form of settlement. We have explained why ordinarily either or both of the parties will not desire this form of settlement so long as compulsory adjudication is available to them. As far as the merits of the processes are concerned, there is no difference between voluntary and compulsory arbitration. Both are arbitrations. The essential difference lies in the fact that under the voluntary scheme, the parties would have surrendered and forfeited their right to seek remedies in the higher civil courts from an unacceptable award of the arbitrator but that under the compulsory scheme, such rights would be preserved to them. When the burden on employers, imposed by a third party, may run to many lakhs of rupees every year, why should employers be misunderstood if they feel reluctant to let go a possible remedy that they may have in the higher civil courts from an absurd award? And when we talk of employers, let us remember that the bulk of the money invested in industry has been invested by large numbers of middle-class people and that it is

their interests that managements are called upon to safeguard. So let us clearly understand that so long as compulsory adjudication continues, voluntary arbitration will not make any substantial progress.

Even after compulsory adjudication has been abolished, the course of voluntary arbitration may not be smooth. We have shown earlier that only two per cent of the general wage changes in collective bargaining are brought about through voluntary arbitration in the U.S.A. The remaining 98 per cent of wage changes are made through plain collective bargaining across the table. The reason for the preponderance of agreement over arbitration in settling wages is that an employer may be prepared to accept even a large burden with eyes open but that he would not be prepared, in economic matters involving large financial burdens, to take a leap in the dark by entrusting his fortunes to a third party, who, however honest, may be both ignorant of the consequences of his award and anxious to please both sides.

There need be no such hesitation to remit to voluntary arbitration the so-called grievance disputes, that is, disputes arising from the interpretation and application of collective agreements and those arising from disciplinary action. Even if a party is dissatisfied with a decision, the effect of the decision may, in the large majority of cases, not do any irreparable damage. True, some cases of grievance arbitration also may prove financially crushing to the employer, but these do not constitute the majority of cases falling under grievance arbitration. In the United States, over 90 per cent[12] of all agreements contain arbitration provisions for disputes arising under the terms of the agreement. This may not apply to the same extent in other countries; in the United Kingdom, for instance, inclusion of arbitration provisions in the agreement is not so widespread. Under the conditions obtaining in India, there is much to be said in favour of incorporating in agreements provisions for referring grievance disputes arising from agreements to voluntary arbitration.

This is all the scope of voluntary arbitration; to expect more out of it is sheer waste of energy. But if we achieve even these possibilities, we would have gained a lot. A large number of adjudications that clog the files of industrial tribunals are, in fact, grievance disputes. If they can be turned over to a proper grievance machinery ending up in voluntary arbitration, we would have greatly improved the atmosphere of industrial relations.

Grievance Machinery: A proper grievance machinery is part and parcel of the collective agreement. It is invariably incorporated as a section of the contract. The grievances dealt with by the machinery might be those arising from the interpretation and application of the provisions of the collective agreement or those arising from disciplinary action imposed on individual workers. It is of the utmost importance that all such grievances should

[12] Beal and Wickersham: *The Practice of Collective Bargaining*, 1959, p. 627.

receive prompt consideration, preferably at the lowest possible levels, so that the peaceful atmosphere of industrial relations is not unduly disturbed.

A formal grievance procedure is not common in India, and hence both managements and unions will have to learn to operate such a procedure. The machinery that now exists for the redressal of grievances is a summary one. The worker usually talks over the matter with his immediate supervisor, but if he does not get any relief, he invariably tries to enlist the support of his union. Thereafter the course of action that may be adopted by the union or the worker is unpredictable. The union may write to the management or even discuss the matter with somebody representing the top management. Often the grievance is immediately converted into an industrial dispute and dealt with as such.

A Subcommittee appointed by the 15th Session of the Indian Labour Conference drafted a set of principles for the drawing up of a grievance procedure. The 16th Session of the Indian Labour Conference approved of those principles and requested the Subcommittee to draft a grievance procedure based on those principles. Accordingly the Subcommittee has drafted a grievance procedure, the salient features of which are:

(1) An aggrieved person shall first present his grievance verbally in person to the officer designated by management for this purpose. An answer should be given within 48 hours of the presentation of the complaint.

(2) If the worker is not satisfied with the decision of the officer, he may, either in person or accompanied by his departmental representative, present his grievance to the head of the department designated by the management for the purpose. The departmental head is required to give his answer within 3 days of the presentation of the grievance.

(3) If the decision of the departmental head is unsatisfactory, the aggrieved worker may request the forwarding of his grievance to the 'Grievance Committee' composed of two or three departmental representatives of workers and two or three departmental heads. The Grievance Committee shall make its recommendations to the Manager within 7 days of the worker's request. In the event of a difference of opinion in the Committee, the views of the members and the papers shall be placed before the Manager for final decision. The final decision of the management shall be communicated to the worker within 3 days of the receipt of the Committee's recommendations. The unanimous recommendations of the Grievance Committee shall be implemented by the management.

(4) The worker has the right to appeal to the management for a revision if the earlier decision be adverse.

(5) If no agreement is still possible, the union and the management may refer the grievance to voluntary arbitration within a week of the receipt by the worker of the management's decision.

(6) If a grievance arises out of an order given by management, the order

shall be complied with before the workman concerned invokes the procedure laid down for redressal of grievances.
(7) The worker should take the permission of his superior for leaving the department in connection with the grievance proceedings. Subject to such permission, the worker does not suffer any loss in wages for work-time lost in this manner.
(8) In the case of a discharge or dismissal, this procedure does not apply. Instead the worker shall have the right to appeal either to the dismissing authority or to a senior authority who shall be specified by the management. The last step of voluntary arbitration is, however, available.

The step-ladder pattern of grievance machinery must be tailored to the needs and circumstances of the establishment concerned. There is no standard pattern which can be applied to all establishments without any modification. In a small company in which the owner or manager frequently walks around and meets his workmen, it would be inappropriate to have a ladder with many steps as in a giant corporation. The ladder in the small company need have only two steps before arbitration, namely, a discussion with the foreman and a discussion with the owner or manager. In a big corporation there can be four or even five steps before arbitration, namely at the levels of the foreman, the production engineer or superintendent, the chief production engineer or superintendent, and the Director, General Manager or equivalent management official. Under Indian conditions it is preferable not to have more than two or three steps before voluntary arbitration. A grievance machinery is an inevitable companion of collective bargaining.

Joint Consultation and Workers' Participation in Management: Joint consultation between labour and management is an inescapable necessity of modern industrial organization. The days of immediate and unquestioning acceptance of management's orders by labour are no more. Workers have started exercising their minds over many problems which in former times were considered the exclusive prerogatives of management. The boundary between managerial prerogatives and collective bargaining has steadily moved to the detriment of the employer's vested rights. It is no longer possible for management to achieve substantial results merely by the process of giving orders and getting those orders executed, i.e., by being authoritarian in methods. Psychologists tell us that effective human relations "is the integration of people into a work situation that motivates them to work together productively, cooperatively, and with economic, psychological and social satisfactions" (Davis: *Human Relations at Work*) and that participation "offers potential for higher productivity and better human relations because it releases man's creative powers and restores human dignity." The same author defines participation "as mental and emotional involvement of a person in a group situation which encourages him to contribute to group goals

and share responsibility in them." We have discussed elsewhere at length the problems of participation. What is here relevant is that the concept of consultation or participation is of considerable importance to the individual undertaking in an era in which managerial prerogatives and workers' rights have both undergone substantial changes.

Participation is useless unless it means mental and emotional involvement, rather than purely increased physical activity. Going through the motions of participation such as holding meetings and asking for opinions achieves little unless workers know that management is sincerely anxious to secure their views and would be prepared to utilize them. Participation motivates people to contribute to the situation. The process enables them to utilize their initiative and creativeness towards the objectives of the organization.

Mention has been made earlier that neither works committees nor joint management councils have proved a conspicuous success in India and that while many of the former have become moribund, the latter have not made adequate progress. The consultative machinery can work fruitfully only against a background of sound labour-management relations. If a works committee or a joint management council is converted into a grievance machinery or a collective bargaining agency, it is obvious that it must fail to produce satisfactory results. If proper arrangements are made for collective bargaining and a grievance machinery is set up, the unit-level joint consultative committee can try to perform its proper functions as outlined in the draft model agreement for the establishment of joint management councils. Since the functions assigned to joint management councils are more comprehensive than those assigned to works committees, it might perhaps be advisable to set up the former in preference to the latter wherever workers are prepared to experiment with an extended form of consultation. There would be no point in having both joint management councils and works committees in the same establishment. Where, however, workers prefer a simpler form of consultation, the works committee would be their choice.

An important reason for the inadequate performance of works committees and of joint management councils is perhaps that the participation has not led to mental and emotional involvement and that the experiments have been carried out only in form but not in substance. This itself shows that the industrial relations atmosphere has not been favourable to the success of such experiments. And yet if the large numbers of workers working in modern factories with costly machinery and equipment are to bring out the best in them in the interests of production, it is absolutely necessary that joint consultation or participation should be made real and not formal.

The tri-partite consultative machinery set up by the Central Government is one of the bright spots in an otherwise sombre picture of labour-management relations in the country. Though the Royal Commission on Labour had recommended in 1931 the creation of a statutory tri-partite organization, called the Industrial Council, for advising Government on labour problems, particu-

larly proposals for legislation, rules and regulations, nothing came out of the recommendation until 1940 when an All-India Labour Conference, composed purely of Government representatives, was called to evolve measures conducive to industrial peace. It was not until the Fourth Labour Conference held in August 1942 that the Conference became tri-partite in character by including representatives of employers and workers. The organization envisaged consisted of two bodies, namely, the Indian Labour Conference and the comparatively smaller Standing Labour Committee. Though the aims and objects of the Indian Labour Conference were stated to be (*i*) the promotion of uniformity in labour legislation; (*ii*) the laying down of a procedure for the settlement of industrial disputes; and (*iii*) the discussion of matters of all-India importance arising between employers and employees, practically no labour matter of any importance has remained outside the pale of scrutiny of these two bodies. The Standing Labour Committee has generally functioned as a 'pocket edition' of the Indian Labour Conference, either continuing the scrutiny of a matter which has already come up for the consideration of the Indian Labour Conference or examining for the first time comparatively less important matters referred to it either by the Indian Labour Conference or by Government. Being smaller in size than the main Conference, the Standing Committee is able to meet more frequently than the Conference. Both the Conference and the Standing Committee have rendered signal service to the cause of labour-management relationship.

The Industrial Committees set up for plantations, coal mines, cement, tanneries and leather goods manufactories, cotton textiles, jute, building and construction, non-coal mines, iron and steel, and the chemical industry have also done useful service, but have been far less effective than the Conference and the Standing Committee. They have in particular scrutinized proposals for legislation in their own fields.

Then there are a host of miscellaneous tri-partite bodies for special purposes. There was the Central Advisory Council for Labour which met once in 1948 and appointed the Committee on Fair Wages and the Committee on Profit-sharing. The Central Implementation and Evaluation Committee, the Central Board of Workers' Education, the Steering Group on Wages, the various Wage Boards, the Central Committee on Employment, and some more are all tri-partite bodies which have been effective to varying degrees.

There are various similar bodies in the States. They are in a way replicas of the central bodies and have achieved similar successes.

An official study made of the functioning of tri-partite bodies by the Labour Bureau of the Government of India in 1959 summarizes the achievements of tri-partite bodies in these terms: "From the variety of subjects discussed in the various Conferences and Committees one might infer that hardly anything of importance in the labour field was left out of the purview of the machinery set up for joint consultation. It is natural, therefore, that the large mass of labour reform that has come about in recent years should have

been discussed at one stage or the other in one or more sessions of either the Conference or the Committees. Thus the success achieved will, in no small measure, be attributable to these consultative bodies which by discussing the urgent problems of the day and coming to an agreed solution paved the way for legislative or administrative measures."

The success of tri-partite consultation which has attended the hard work put in by the Central and State Governments ever since Independence is one that deserves to be strengthened and supported in future years. Whatever be the nature of the machinery that may be built up for the handling of labour-management relations in future, the tri-partite consultative machinery will prove a valuable agency for its smooth functioning.

While joint consultation at the level of the unit in the form of works committtees exists on a fairly large scale, even though it may not be very effective, and tri-partite consultation at the national level is both extensive and effective, the greatest deficiency in the machinery of consultation is at the industry level. No doubt tri-partite industrial committees set up by the Government of India have done good work, but that is not a substitute for voluntary bi-partite consultation between the parties themselves. There is no bi-partite joint consultative machinery after the fading out of the Joint Consultative Board which, the Second Five Year Plan told us, had "already achieved a limited measure of success." There is nothing in India corresponding to the joint industrial councils of the United Kingdom. The joint industrial council for each industry, set up on the recommendations of the Whitley Committee on Relations between Employers and Employed, 1916, consists of equal numbers of representatives of employers and workers. The main purpose of the Whitley Committee had been to make recommendations which, if adopted, would help to secure industrial peace. The Committee, therefore, suggested that the functions of the councils should especially cover wage negotiations and conditions of employment and the settlement of disputes. But the Committee proposed that the councils should consider such matters as "the better utilisation of the practical knowledge and experience of the work people" and "technical education and training, industrial research, improvement of processes, etc., and proposed legislation affecting the industry." The councils are bi-partite, but in the case of several councils, officers of the Ministry of Labour and National Service attend the meetings. The bi-partite industrial council is really an extension of the consultative committee at the unit level. Unit level consultation on the broader issues can be successful only if there is a corresponding committee at the level of the industry to attend to uniformity and coordination. It is suggested that efforts should be made to set up bi-partite industrial councils for effective consideration of problems arising at the level of the industry. If collective bargaining and joint consultation at the unit level prove a success, the bi-partite industrial council will be a natural extension of the successful efforts made at the unit level.

Rationalization and Productivity: Mention has already been made of the serious difficulties encountered by employers in putting through essential and unavoidable schemes of rationalization. The term "unavoidable" has been used purposely. The unavoidability is of two kinds: First, there is the need to replace old and worn-out machinery by new machinery. Because of the great technological improvements that have taken place in recent times, new machinery is invariably far more efficient than the old one replaced and often requires far fewer workers. Secondly, the use of modern machinery in countries which compete with us in the export markets necessarily compels our employers also to modernize their methods and machinery so as to retain their competitive position. It would, therefore, serve no purpose for anybody to ignore the fact that rationalization, particularly of machinery, means that for the same volume of output the volume of employment will necessarily go down. All that can be ensured, therefore, is that by introducing rationalization during a programme of expansion no existing worker is retrenched. To demand, as some of the I.N.T.U.C. leaders have done, that rationalization should not "reduce either the potential or the existing volume of employment" is, in fact, to stipulate that a larger number of workers than is needed by a new machine or process should be kept on merely because that is the number currently employed in the process. This will halt productivity drives as pointed out by Naval Tata.

It is now freely admitted that whatever be the underlying reasons, the productivity of the Indian worker is extremely low as compared to the productivity in industrially advanced countries. We are far behind European standards even as the productivity of the European worker is considerably less than that of the American worker. The Director of the New Delhi Branch of the I.L.O. says in an article on discipline among working classes in India that "our rate of production per unit compares unfavourably with that in industrially advanced countries and whatever technical reasons or extenuating circumstances there may be, the fact remains that this state of affairs should be improved." An article by Dr. H. C. Ganguli, a psychologist, prepared for the Fourth Asian Regional Conference has this to say on the subject: "A common complaint of management of both governmental as well as private industries has been that in the post-war period a worker does about one-half (or even less) of the work he used to do during and before the war. Since a person's productivity depends, so far as he is concerned, on his skill and his application and as there is no reason to believe that the worker's skill has deteriorated, one is forced to conclude that it is his application to his job that is at fault."

The Fiscal Commission, 1949-50, paid considerable attention to labour efficiency in relation to industrial development, to which it devoted a whole chapter in its final report.[13] Keeping in mind all the difficulties inherent in

[13] *Report of the Fiscal Commission*, 1949-50, Volume I, p. 230.

comparing labour efficiency, the Commission said: "In almost all the places that we visited, industrial and commercial interests complained of deterioration in labour-efficiency that had taken place during the last few years, and argued that the margin for increase in efficiency even under existing conditions of plant, equipment and management was considerable. Representatives of labour rarely challenged the fact of a fall in efficiency but were generally inclined to attribute it to causes outside the control of labour." The Commission quoted figures to show that between 1939-40 and 1948-49 the average labour cost per ton of finished steel had gone up from Rs. 31.54 to Rs. 92.80 but that the average output per employee had gone down from 24.36 tons to 16.30 tons. The Commission also quoted the opinion of the Chairman of the Tata Iron and Steel Company: "The output per man in our structural shops is half a ton per month, whereas the average output per man in similar shops in the United States is 5 tons per month. We have been advised by experts that in our maintenance departments the majority of the men are working at one-third to half of their capacity even under normal Indian conditions."

After examining the statistics of production of iron and steel and coal the Commission said that "the indications are clear that in recent years there has been an appreciable fall in labour efficiency."[14]

The Commission went on to emphasize that "rationalization in all its aspects holds out the only hope of adjusting costs of production to the level of costs elsewhere, and maintaining the competitive position of Indian industries both in the domestic and external markets."

The Third Five Year Plan makes the disquieting admission that "Over the past decade, on the whole India's exports have been stagnant"[15] and that "while the total world export trade doubled, India's share in it declined from 2.1 per cent in 1950 to 1.1 per cent in 1960."[16] Cotton and jute manufactures, two important and long-established foreign exchange earners, dropped from an annual export value of Rs. 250.5 crores (501 million dollars) in 1950-51 to Rs. 180.5 crores (361 million dollars) in 1959-60. The Fiscal Commission, writing in 1950, had warned us that "the labour cost per loom per day for plain grey cloth in a Bombay mill was over three times the cost in a Japanese mill. It is this disparity in labour costs which made the position of the Indian industry difficult in competition with the Japanese industry."[17] Again, referring to the export targets fixed, the Third Five Year Plan said that "other measures aiming at raising efficiency and lowering costs must be pushed forward to the farthest extent possible." And yet what do we find in the chapter on labour policy in the Third Five Year Plan? It makes this

[14] *Report of the Fiscal Commission*, 1949-50, Part I, p. 232.

[15] *Third Five-Year Plan*, p. 134

[16] *Ibid.*, p. 135.

[17] *Report of the Fiscal Commission*, Part I, p. 67.

surprising statement: "The term (rationalization) has often been wrongly associated with increase in workloads and added strain on workers in order to swell the volume of private gains. Large gains in productivity and an appreciable reduction in unit costs can be secured in many cases without causing any detriment to the health of the workers and without incurring any large outlays." We have already referred to these statements in the section dealing with the Labour Policy of Government. Although these statements may factually be correct, the way they have been expressed and the context in which they have been made are sufficient to reassure workers that it is Government's policy to secure an increase in productivity without in any way increasing the workload of the worker. Such a deliberate refusal to press into service the surplus capacity of the worker which exists even under present-day conditions cannot serve the cause of productivity. It has been the experience of industrialists in India that whenever they introduced good incentive systems of payment and opened up the possibility of substantially higher earnings to labour, the output per man shot up to an unbelievable extent. When the piece-rate system was introduced in the principal ports and docks some years ago, the same result followed. The *per capita* output and earnings increased considerably—in fact in some cases abnormally. Against an average earning of Rs. 8.00 (1.60 dollars) per day, some workers started earning as much as Rs. 40 and Rs. 50 (10.00 dollars) per day. As a result, the workers who had originally vehemently opposed the introduction of the piece-rate system became such fanatic adherents of it that they would not agree to slow down the operations even when the supervisors considered more careful handling necessary. Well-balanced incentive schemes in other countries provide for a maximum additional earning of about 25 to 30 per cent. In India, both output and earnings often go up by 75 or 100 per cent. The experience of the Hindustan Machine Tools, a public sector plant at Bangalore, widely publicized in the press, is the same. Four Indian workers used to produce as much as one Swiss worker in 1956. By 1960, three Indian workers were able to produce as much as two Swiss workers, and that too, after the plant had dispensed with the services of the last technician.[18] This and many similar examples show that the workload borne by the worker under time wages is often quite low. The Indian worker is certainly capable of doing a much larger amount of work than he does now without in any way risking his health.

Apart from the fact that the productivity of the Indian worker is low, and unit labour costs correspondingly high, the Indian industrialist is plagued by his inability to adjust his labour force to suit his requirements even when he guarantees that there will be no retrenchment. An increasing number of industrialists have started adopting modern methods of management, including proper workloads, job evaluation, incentive systems of payment, etc. The

[18] *The Times of India*, Delhi of 9-4-1960.

employer meets with little or no cooperation from the union in any of these measures. Even for a nominal increase in the workload, such as for instance lifting a raw material a few paces in addition to one's work, or for a nominal decrease in the number of workers constituting a group or gang, there is tremendous opposition, with the result that the industrialist soon becomes discouraged and disillusioned. There is equally strong opposition to the redeployment of labour. An unskilled mazdoor working inside a shop would refuse to be transferred to an outdoor work; an unskilled helper at a machine would refuse to work as a carrier of material. Mention has already been made of the large extent of indiscipline in many establishments. The morale of supervisors is at a low ebb; they find it very difficult to deal with this kind of refractory labour.

There is yet another kind of difficulty which is deterring many employers from taking advantage of temporary spurts in demand. An employer often finds it possible to take in some 50 or 100 workers and keep them busy for a few months, but if he is thoughtless enough to do so, he is sure to be faced with a serious labour trouble when he has to discontinue that activity after some months and to send away the additional labour. The result is that many employers take care to see that temporary workers are taken on only for a month or two and that they are discharged immediately thereafter. Similarly if a portion of the employer's activities has to be closed down either for want of orders or because he is running into heavy losses, he must be prepared for serious labour trouble. How can any industry expand and progress if it is shackled down by so many impediments? Of all the financial burdens and legal restrictions imposed on the employer, none perturbs him so much as the inadequacy of the support he receives from authorities for improving productivity and the positive opposition he encounters in adjusting the volume of his labour force.

The State policy in the matter of rationalization and productivity has all along been halting and ambiguous—a case of running with the hare and hunting with the hounds. The complaints of industrialists that labour inefficiency and high labour costs are affecting exports are brushed aside as the outpourings of vested interests. Our comparative stagnation in exports alone will justify the setting up of a high-powered commission to examine, among other things, whether the productivity of labour is low even under Indian conditions, what the reasons are for such low productivity, whether and how it can be raised, whether the low productivity is a serious contributing factor to the stagnation of exports, and what the consequences to the nation are of low productivity in the form of inadequate utilization of machine capacity and of high overheads.

Tribunal of Rationalization and Productivity: The greatest need of industry at present is to increase its productivity—productivity of all factors including labour. The management must, of course, take the lead in the matter. It

must put its own house in order and improve all matters contributing to productivity which lie immediately within its power. What these are have already been alluded to. Better production methods, better planning, better and timely supply of raw materials so long as these are within management's control in these days of shortage, better maintenance of machinery, reduction of breakdowns and quicker repairs, the provision of better tools and machines, adequate training of workers — these and a host of others well within the control of management must be duly and effectively attended to. Management must then be required, encouraged, and supported to evolve measures which will contribute to the higher productivity of labour. These will include measures such as job classifications and evaluations, the evolution of scientific wage structures, the establishment, wherever possible, of incentive systems of payment, the determination of proper workloads, speeds of operation, and labour strengths—in general all steps that would lead to the purposeful engagement of labour throughout the working period without its being subjected to undue or harmful strain and on rates of remuneration which are deemed fair by modern scientific systems of payment. In a period of rising prices and inflation, the freezing of wages may be desirable but may not be wholly feasible. It has been recognized that even in such circumstances higher payment for increased productivity would be permissible and that such payment might not accentuate the forces of inflation. It is in periods of inflation that the evolution of incentive systems of payment related to productivity assumes importance.

These are no new suggestions and have been tried out in the past but with limited success. In all such attempts there are frequent and unbridgeable differences of opinion between management and labour over such matters as job evaluations, workloads, group or gang strengths, rate of incentive payments, adjustment of standards for improved methods and machines, etc. These differences have led to serious disputes and to the virtual paralysis of many incentive systems of payment. If employers cannot adjust standards for improved methods, they must feel greatly frustrated. Voluntary methods of adjustment of such differences have proved ineffective, and adjudication at the hands of inexpert tribunals has led to protraction and unsatisfactory results.

If Government are really concerned about the low productivity of Indian industry and intend seriously to take effective steps to raise productivity to progressively higher levels, they have undoubtedly an uphill task, but that would be the only way to save the industry that Modern India is so laboriously building up from certain downfall. Here it might be as well to remember certain basic facts. The country is borrowing, both from India and abroad, enormous sums of money and investing heavily on modern industry. Since we are building up practically the whole of modern industry in an era of high prices, our industry, even if most efficiently run, will have to carry the burden of a heavy capital cost such as few industries in the more

industrialized countries, with both old and new units, will have to. Our competitive capacity is instantly lowered by this very fact of an all-high capital structure. If on top of this inevitable handicap we insist on running our industries inefficiently, we need not blame anyone but ourselves for our sorry plight. Industry created at such high cost cannot be run as if it were an unemployment relief scheme. The public at large have great stakes in industry; those who have invested their small savings in industry expect an adequate return; the ordinary consumer expects industrial goods at competitive prices; the nation as a whole expects modern industry to provide a good portion of the funds necessary for expansion. A high-cost industry will thwart all these legitimate expectations. When industry has been created with a large amount of scarce foreign exchange, it is incumbent on it to do its duty fully towards earning substantial amounts of foreign exchange regularly. This it can do only if it is able to export competitively. With the rapid and spectacular reconstruction of war-damaged industries in Europe and elsewhere and the rapid disappearance of the post-war seller's market, international competition is already very stiff and is growing more so every year. An industry burdened with a lot of unproductive and uneconomic labour cannot hope to be competitive in international markets, as has already been proved convincingly by the poor and declining state of our exports described earlier. It is, therefore, imperative that we run our modern industry as efficiently as any advanced country. The productivity of all our factors — management as well as labour — must be raised to the same high levels as have been achieved in advanced countries. This does not mean that the unemployment problem is not important or that we should not strain every nerve to achieve the largest possible volume of employment. Let a large number of labour-intensive schemes be pursued; these will require comparatively little capital and will provide much employment. The cost of production may be high because of the comparative inefficiency of production and subsidies may have to be given, but a straightforward expenditure like this on the unemployment problem is far better than undermining the competitive capacity of a modern industry built up at great cost. It would be a misuse of scarce capital to run a capital-intensive industry as if it were a labour-intensive unemployment scheme.

It is, therefore, suggested that legislation be undertaken to set up a new statutory authority which might be called the Rationalization and Productivity Tribunal. Its functions should be defined. These should include, in the event of dispute, the fixation of workloads, the determination of the strengths of worker groups for particular operations, the adjudication of the details of incentive systems of payment, the revision of standards, retrenchments or reallocations of labour arising from rationalization and similar matters. The Tribunal should not be composed of judges. It should consist of a number of technical experts well-versed in those techniques. They should be independent experts wholly unconnected with management or

labour — preferably not even previously connected with either management or labour. The Tribunal should not be of the usual tri-partite wage board pattern. There should be no tussle in the Tribunal between management and labour interests.

Such a tribunal should be assisted by a competent adjunct which may be called the Institute of Rationalization and Productivity with an adequate number of time and motion study men, work study men, etc. When a dispute is referred to the Tribunal, the latter should settle the issues at dispute and turn over the case for appropriate technical studies to the Institute. The final hearing should be taken up only after the Institute has completed its study and submitted its report. The officer in charge of the studies who prepares the report should be examined as a witness by the Tribunal. When the Institute conducts its studies, a representative each of management and labour could be attached as observers but with no power of intervention or of slowing down the progress of the studies. The decision of the Tribunal will be binding as an award. When collective bargaining becomes the rule, the Tribunal and the Institute will convert themselves into optional facilities at the disposal of the bargainers.

Unless these difficult disputes are effectively settled in some such manner, all talk of productivity will, in present-day conditions, lead to no results.

Certain Illegal Strikes: The word "strike", as defined in the Industrial Disputes Act, is very wide in scope. A cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment is a strike. The two main ingredients of this definition are (*i*) a cessation of work by a body of persons employed in an industry and (*ii*) acting in combination or concert, i.e., on the basis of a demand or in pursuance of a design. This definition would thus include secondary strikes, sympathetic strikes, general strikes, organizational strikes, and jurisdictional strikes. All these can be legal strikes except in the situations mentioned in sections 22 and 23 of the Industrial Disputes Act. Even the U.S.A. which allows the maximum latitude to unions has prohibited some of these strikes and rendered them illegal. For instance strikes for the following purposes are illegal, namely, (*i*) to require or force an employer or self-employed person to join a union or an employer organization, (*ii*) to force the employer or any other person to cease dealing in the products of another employer or to cease doing business with any other person (secondary boycott), (*iii*) to force or require an employer to recognize or bargain with one union if another union is the certified bargaining agent or to force another employer (not the employer of the strikers) to recognize an uncertified union, and (*iv*) to force or require an employer to assign particular work to employees in one union or craft rather than to employees in another union or craft (jurisdictional strike).

In India strikes of the third category mentioned above are common because of rival unionism. Some of them have been prolonged and have caused much loss to the economy, the workers and the employer. A developing economy cannot afford the luxury of such strikes. Secondary boycotts are not very common but sympathetic strikes are quite common. A sympathetic strike, if called in support of workers in another industry or employment, amounts in part to a general strike and should be prohibited. Similarly the wholesale general strikes which take place in support of political demands or demonstrations also should be declared illegal. They cause a colossal amount of loss to the economy. The Director-General of the I.L.O. has stated in his report on labour relations that "the decision to regard a normal working day as a national holiday (or as a day of general strike) generally causes a greater loss of production than a year's labour disputes."

It may be recalled that after the General Strike of 1926 in the United Kingdom, the Trade Disputes and Trade Unions Act, 1927 was enacted which declared illegal sympathetic strikes and strikes designed or calculated to coerce the Government either directly or indirectly by imposing hardships on the community. Though this Act was got repealed by the Labour Government in 1945, this shows what a British Government, driven to extremities, might do in future also. An attempt made in 1931 by the then Labour Government to repeal the 1927 Act had to be shelved because of a Liberal Party amendment, accepted by the House, aiming to make any strike illegal which adversely affected the interests of the community. In fact, when the General Strike was still on, that is, before the enactment of the 1927 Act, Sir John Simon announced in the House of Commons that the General Strike was illegal. He said: "Every trade union leader who has advised and promoted that course of action is liable in damages to the uttermost farthing of his personal possessions." Within five days (May 11, 1926) a Chancery Judge declared judicially that the strike was illegal. The Prime Minister said on the eve of the strike: "It (Government) found itself challenged with an alternative Government... when you extend an ordinary trade dispute in this way, from one industry into a score of the most vital industries in the country, you change its character.... I do not think all the leaders when they assented to ordering a general strike fully realized that they were threatening the basis of ordered government, and going nearer to proclaiming civil war than we have been for centuries past.... It is not wages that are imperilled; it is the freedom of our very Constitution." Churchill said that "it (general strike) is a conflict which, if it is fought out to a conclusion, can only end in the overthrow of Parliamentary Government or in its decisive victory."

In present-day conditions in India, there is the fullest possible justification for declaring general strikes and sympathetic strikes extending beyond an industry or trade illegal. "Bombay Bandh" and similar one-day general strikes, if prolonged and successful, will lead to the same consequences as

were visualized in the United Kingdom on the occasion of their 1926 General Strike. Strikes relating to recognition must be dealt with as part of the representation law. Such strikes would obviously be illegal if called in contravention of that law.

It is suggested that these kinds of strikes should be declared illegal. Mere declaration of illegality gives no relief to the employer, especially if there is no provision for a quick and authoritative ruling that a contemplated strike is illegal. Provision should be made to enable a specified public authority or an employer to apply to a tribunal or similar judicial authority for a summary hearing and declaration whether a contemplated or actual strike is legal or illegal. A time-limit of a week or ten days may have to be set for the tribunal to give its verdict, any service of notice on the opposite party being done by a summary process such as publication in a daily newspaper. When a strike is declared illegal, no public authority should lend any support to the striking party by starting conciliation, negotiation, etc., until the strike is called off. There should be a statutory ban to this effect

Strengthening of the Industrial Relations Machinery: Under a system of collective bargaining unsupported by compulsory adjudication, there will be greatly increased need for conciliation of a high order. Many of the conciliation officers now functioning in the Central and State spheres are inexperienced persons who have not imbibed the ideals and techniques of conciliation The more outstanding the conciliator, the better the chances of sources. They should not be mere birds of passage, but should be persons who are going to make industrial relations a life-time job. Not all intelligent and clever persons make good conciliation officers. The overbearing and bossy type will not make good conciliators. They will shout and order and achieve nothing. The weak and the timid will collapse under the weight of the burden. The tactless will complicate the issues and worsen the relationship between the employer and the union. So the persons we have in view will be those who will not shrink from difficulty and responsibility, who have adequate knowledge and experience of labour matters, who have preferably already learnt the art of conciliating, who are prepared to master the details of a case as thoroughly as the parties, who are resourceful enough to evolve opening leads, who are endowed with a capacity for infinite patience under annoying and trying conditions, and whose integrity and persuasiveness will induce the parties to examine proposals which may not, at first sight, be tempting. Good conciliation officers will have to be paid a much higher salary than is paid now. They should be adequately trained in conciliation methods and kept up to date by being deputed to attend seminars and conferences frequently. They will also be responsible for assisting the parties to work out collective bargaining. Conciliation officers, particularly of the Centre and of the more industrially important States, should be placed in a Directorate of Conciliation with a Director and supporting Deputy

Directors at its head. While this office should look after all matters incidental to conciliation and collective bargaining, such as handling grievance procedures, voluntary arbitration, implementation of any voluntary Codes, establishment of joint consultative bodies, etc., it should not be burdened with other administrative matters arising in a labour ministry or department.

As mentioned earlier a separate quasi-judicial agency should remain in charge of the proposed law relating to unfair labour practices and certification of the representative union.

Professor Richardson, the I.L.O. Expert, has recommended in his Report the setting up of three other Directorates for (*i*) inspection and enforcement, (*ii*) labour-management cooperation and personnel management advisory services, and (*iii*) research, training and liaison. The first one will remain in charge of the administration of the Industrial Employment (Standing Orders) Act, the Trade Unions Act, the Minimum Wages Act, the implementation of collective agreements and awards, etc. The second will be concerned with labour-management cooperation both in public and private sector establishments, the development of personnel administration, the improvement of productivity, labour welfare and allied matters. The last directorate will be in charge of research studies, training courses, workers' education, the holding of the various conferences, and similar matters. Such separate directorates will be necessary and justified at the Centre and in the more important States. Other States should be prepared to handle much of the work indicated above, but they may not have to set up self-contained directorates separately for each type of work.

A matter which requires early attention at the hands of Government is the anomalous position of the Labour Welfare Officer prescribed and protected under the Factories Act. Some welfare officers have interpreted the existence of these special rules to mean that they have a status somewhat independent of management and that they have a responsibility for workers' welfare which may not coincide with the management's views on the subject. Some labour welfare officers have, therefore, gone to the extent of suggesting that they should be paid by Government and given an independent status. Some employers too view the labour welfare officer as a neutral official standing between themselves and their workers. Professor Van Dusen Kennedy says that the Indian labour welfare officer "is thought of as performing something of a social work function and much of the academic training designed for him has this orientation."

The labour welfare officer's position, which is wrongly assumed to be quasi-independent of management, is coming in the way of his being effective. He is not trusted either by management or by labour. The management thinks that he is a representative of labour, pleading their cause without regard to management's interests. Workers believe, on the other hand, that he merely pretends to safeguard their interests but that he is only the whipping boy of management masquerading as their friend. It must be said

at once that these difficulties have cropped up to any appreciable extent mainly in public sector establishments. In private sector establishments, every employee in the officer cadres knows that he cannot keep his job the moment he annoys his employer. So he is functioning in all respects as a management official and obviously, unlike his colleague in the public sector establishment, with peace of mind. Certain measures of labour welfare have been prescribed under the Factories Act. These have in any case to be provided by the employer whether there is a labour welfare officer or not. He can, and should, undertake several additional measures of welfare provided his finances permit, but the person who is in the best position to persuade him to do so is one in his confidence, namely, a personnel officer or someone who is wholly a management man.

Some labour economists try to read more into the statutory provision relating to welfare officers than is perhaps necessary. They prefer to consider the welfare role as being something quite different from the personnel role. They believe that a welfare-oriented officer would look at every factory situation in a way different from the personnel-oriented officer. This trend of reasoning unnecessarily tries to convert the welfare officer into a great humanitarian and the personnel officer into a strict and unfeeling management official. The fact is that a successful personnel officer is an expert in human relations and has all the qualities normally associated with a welfare officer. It is, therefore, unnecessary to show up the two jobs in entirely different lights.

It is, therefore, suggested that all statutory provisions relating to the employment of the labour welfare officer be removed from the law. All that Government need do is to have an inspecting agency for verifying whether employers are complying with the statutory provisions in regard to welfare, which must, of course, continue to remain in the statute book as before. It is for the employer to decide whom he should appoint for the purpose and what he should call him — personnel officer, welfare officer, or administrative officer. Government would do well to popularize the concept of a modern personnel department manned by experts. The cause of welfare will be greatly advanced by giving the employer a free hand in the matter.

Enlargement of the Scope of Minimum Wage Fixation: As compulsory adjudication is withdrawn from particular industries, it will be necessary to fix minimum wages for the unskilled and less-skilled categories of workers in those industries in the early stages, that is, until collective bargaining has become established in those industries. This will necessitate a change of outlook on minimum wage fixation. It is, however, not necessary that the minimum wage law should be extended to all industries from which compulsory adjudication is withdrawn. For instance the textile industry in Bombay or Ahmedabad or even in Coimbatore, Madras and Kanpur is capable of looking after itself. But minimum wages may have to be fixed

for units in other parts of the country. The criterion should be whether there is a sufficiently strong union in the industry in the area concerned which can secure reasonable terms through collective bargaining. In industries in which wages have been fixed through adjudication or by wage boards in the past, there would be no need to fix minimum wages. So the appropriate Government should have the power to require the fixation of minimum wages for selected categories of workers in any industry in any area. Wages should be fixed on considerations appropriate to minimum wages and not to fair wages as otherwise the incentive to bargaining may be taken away. Minimum wage fixation is only to prevent the employer from proving too difficult for unions not too strongly organized.

Conclusion: The greatest need in the field of labour-management relations is for our leaders to evolve a long-term labour policy rather than to rely on one which spends itself out with each plan and is based on immediate expediencies. In doing so, they must have the courage of their convictions. In a democratic state, a leader must, no doubt, respond to the wishes of the majority and suit his policies to their needs, but he has a responsibility not merely to follow but to lead. He has to inform and educate the public and influence them along lines he would have them traverse. In any case he must find out what the public, or the concerned section of the public, really thinks and wants. If the question for decision is whether outsiders should be allowed on the executives of unions, it would not be a proper way of ascertaining public opinion to consult the very outsiders themselves.

A perusal of the Five Year Plans does not show that labour policy has become crystallized over the last fifteen years. The first Five Year Plan was evolved in the years immediately following Independence—years which could certainly be termed abnormal. Much was permissible during that Plan which would not be acceptable in normal times. And yet it was that Plan, more than either of its successors, which put on a bold face and tried to adapt accepted principles to immediate exigencies. It said that "taking the period of the next few years, the regulation of industrial relations in the country has to be based on these two considerations and it is incumbent on the State to arm itself with legal powers to refer disputes for settlement by arbitration or adjudication, on failure of efforts to reach an agreement by other means." At the same time it went on to say "that the endeavour of the State has all along to be to encourage mutual settlement, collective bargaining and voluntary arbitration to the utmost extent." It is obvious, therefore, that this Plan looked upon intervention by the State through tribunals as a passing phase necessitated by the fact that the country was passing through "a period of economic and political emergency." In a period of emergency, no apology would be needed for exceptional measures.

In view of these circumstances one would have expected that the Second Plan, prepared in more normal times and with greater forethought, would

give a firm and positive lead as to the direction in which labour-management relations should be guided. But that Plan gave no such lead. It made a number of generalizations relating to the multiplicity of trade unions, political rivalries and lack of resources of trade unions, the need to reduce the number of outsiders, the problem of the representative union, etc., but on the vital question whether compulsory adjudication should be continued or whether it should be discontinued in favour of collective bargaining, all that it had to say was that "in intractable cases, where these methods fail, recourse to Government intervention would be unavoidable."

The same lack of precision characterized Government's policy in regard to other vital questions such as the intrusion of outsiders, wages, productivity, rationalization, bonus, etc.

The Third Plan took matters no further. We have already indicated earlier how it dealt with important matters in a very casual manner.

Government's labour policy is like starting on a long voyage with only a vague idea of the destination and with neither chart nor compass to mark the course. Fear of storms ahead makes the ship wander hither and thither, always seeking the calm and avoiding the straight but difficult route traversed by expert mariners. Already she has wandered far and might never be able to get back into line. We are told that the ship of State is in delicate health and is not fit to face storms. But whether she can ever reach the destination is more than anyone can say.

The trade union movement was in its infancy at the time of the enactment of the Indian Trade Unions Act, 1926 when the mantle of protection of the outsider was soothingly wrapped around it, but the passage of forty years has done little to wean the infant from its ever-solicitous foster mother. These foster mothers are still shouting in 1965 what they did in 1926, namely, that the infant is an infant and that it will be eaten up by the ogre of an employer.

When we asked for independence, not one of us ever thought of admitting that we were incapable of governing ourselves or that we needed an outsider to protect us. For an infinitely smaller thing, namely, the self-government of a union, our leaders are virtually unanimous in saying that the ward has not yet come of age and that the protector must be around him until he reaches — if ever — the years of discretion.

Indian workers, left to themselves, will learn to defend themselves — whether it be against the employers or against anybody else. Is it wholly unreasonable to demand that they should be freed from their present shackles of protection ?

The right to strike is now widely recognized as the supporting limb — almost the backbone — of collective bargaining and hence of industrial democrary. Even as armed might is a guarantee of peace, the right to strike, kept in reserve, is the sanction for collective bargaining. It is often described as a force conducive to agreement and compromise. The practice of collec-

tive bargaining is an exercise in industrial democracy which, in turn, is a symbol of political democracy.

Our need is not simply to build up industrial peace — valuable as it is. We should be more concerned about the building up of democracy itself. Had the needs of planning and of economic development been only for a limited period, one might temporarily have put up with compulsory adjudication or any other cramping device, for a time, but when we know for certain that a series of plans which will take us into the distant future is going to regulate our lives and behaviour, it is time to consider whether freedom of action should not be restored in an area hitherto subjected to severe restrictions.

The best way to make the trade union movement strong and independent is to allow it full freedom and initiative to grow, unimpeded by the support of a Samaritan. Let the outsider depart when it is still decent for him to do so.

Some people believe that if an industrial dispute is not settled amicably through negotiation, the only proper course left for the parties is to submit it to an independent person for arbitration. The Labour Minister of Bombay wrote in an article in 1957 that a trial of strength was not a proper way to settle a dispute, that it was the party which had justice on its side that should win, that "obviously a party to a dispute is not qualified to decide what is right or who is right", and that "if we once accept the principle that a decision by an independent party is preferable to a trial of strength, that no party can be a judge in its own cause, that it is the truth or justice that should prevail and not might, or in other words, if we accept the principle that Right is Might and reject the principle of Might being the Right, one must accept the necessary consequence, namely, the compulsory arbitration." While his views are substantially those held by the I.N.T.U.C. and even by several of the Central Labour Ministers, this is a legal and not necessarily a labour relations point of view. Such views do not take into account the nature of collective bargaining. In the field of labour-management relations, there is nothing like "What is right or who is right" outside the terms of a collective agreement. The collective agreement, when entered into, is the law. Some, like Professor Sumner Slichter of Harvard, call it the constitutional law in a system of industrial jurisprudence. What that law says is the right; it will also say who is right. In the absence of such a constitutional law, it is not possible for a third party to decide as to what is right or who is right.

There are no absolute yardsticks by which the demands of a union can be measured. The so-called principles evolved by the Fair Wages Committee and the Labour Appellate Tribunal merely give some broad indications of the lines along which thinking may be directed, but they still leave a large amount of discretion to the thinker. In other words the arbitrator has to be the law-maker instead of the parties themselves. That is the drawback of the trend of the Labour Minister's opinion.

Labour's policy throughout the world is to ask for more and still more; it recognizes no other economic law. If a party to a dispute is not qualified to decide what is right, presumably because of self-interest, an arbitrator is even less qualified to do justice to a dispute because he has no means of knowing or deciding how the business is going to behave in future years and whether an inroad into the margin of profit is acceptable to the employer. When a tribunal gives an award, there is no pretence that justice is being administered. At best the arbitrator tries to put himself in the position of the parties to see what would be acceptable to them — an extension of collective bargaining. Walter Reuther, President of the powerful United Automobile Workers' Union of the United States, characterized arbitration as arbitrary in his statement: "Labor, as well as management, is opposed to compulsory arbitration because we do not believe it is desirable or practical in a democratic society to place in the hands of a third party, to whose selection labor and management have not agreed, the power arbitrarily to fix wages, hours, or working conditions. Such a measure would be a long step toward the creation of a super-state that would limit to an increasing degree the rights of individual citizens."

In the sphere of labour-management relations we have borrowed many concepts and institutions from countries which have experimented with them and explored their possibilities for a long time, and we cannot now refuse to benefit from their experience, merely because some other line of action appears to us convenient for our immediate purposes. We pay lip service to the cause of collective bargaining, but will do nothing really to encourage it. We seem to seek industrial peace as an end in itself and not as a means to attaining the full potential of our productive capacity. Our dread of industrial strife is so great that we are prepared to pay any price for avoiding it. Experts in the field now believe that a measure of occasional industrial strife may be unavoidable and may not be harmful. Bakke and Kerr say : "Implicit in the whole process (of collective bargaining) is the ultimate resort to force. Nearly all bargaining takes place under the implicit if not explicit threat of a strike or a lock-out. The threat of warfare, backed by both the ability and willingness to fight, is the primary bargaining weapon of each side." Charles Gregory says : "The backbone of collective bargaining has always been economic coercion, which includes union recourses like strikes, boycotts, and picketing, as well as employer recourses like shutdowns, lock-outs and farming out work." Paul Sultan says: "While it must be admitted that a strike is injurious, this should not obscure the utility of the freedom to strike.... The strike represents a force conducive to agreement and compromise.... When the Government restricts the freedom of labor and management to disagree with each other, relations often become more disagreeable. A continuing domestic cold war can exact frightful costs from both industry and the worker that a strike might avoid. The strike can be justified as a legitimate expression of a legitimate

freedom." All experts on collective bargaining hold views similar to these. If we wish to avoid strike in any event and at all costs, we must give up all hopes of real collective bargaining. Strike, as the supporting arm of collective bargaining, may be no more detrimental to industrial democracy than parliamentary opposition and public demonstrations may be to the working of political democracy.

The development of a proper system of labour-management relations is a long-term project which might easily spread itself over several generations of trade unionism. The tradition of stable bargaining cannot be acquired overnight. The system of labour-management relations cannot be treated as something with which we can experiment in one way today and in another way tomorrow. We must choose the right path and start on the long course. The longer a country gives itself up to compulsory adjudication, the more difficult it is for it to establish collective bargaining on sound lines, and the two processes cannot mix even as oil and water cannot. All our facile talk of encouraging mutual negotiation and collective bargaining to the largest possible extent and of ordering compulsory adjudication only as a last resort is a mere excuse for the perpetuation of compulsory adjudication. Already we have built up a strong resistance to the abandonment of compulsory adjudication. If collective bargaining is our ultimate goal, the earlier we start on the right path, the better for our success. Otherwise with industry growing out of all proportions with each succeeding Plan, we shall have built up the biggest nationalized industry of all, namely, a Government controlled adjudication machinery which must assume menacing proportions at no distant time.

It is time we recognized that the trade union movement has come of age and that it is capable of looking after itself perfectly well, especially if it is going to be called upon to play its full part only after a ten-year period of preparation and transition as suggested earlier. There is no warrant for the apprehension that the movement will not be able to defend itself against the onslaughts of employers or that it might indulge in an orgy of strikes to the detriment of economic development. Employers, as a rule, do not grudge making more and more payments to labour; what they do grudge and complain about is the unnecessary pampering of labour by politicians which prevents labour from realizing its full range of potentialities and contributing its full quota for the building up of the nation's economy. Workmen are patriots; they can work wonders if they are not misled and hampered. Both our internal economy and our foreign trade can be raised from the present low levels of accomplishment and stagnation and given the necessary fillip only if a mighty effort is made to increase productivity all round. The cause of productivity cannot be served by the half-hearted exhortations of different authorities pulling in different directions. Far from indulging in a spirit of healthy competition and of emulation of one another's high-level achievement, we seem to be taking pride in not departing from the flat level

of the all-round average in ambition and achievement. What the country wants today, more than anything else, is hard, very hard, work from all concerned, including every section of labour, and any person, leader or follower, who says or does anything that might dissuade or discourage the worker from yielding up his full quota of daily work is an unpatriotic person who has no business to inflict himself on a society which is up and on the march.

Summary of Suggestions: The suggestions contained in this chapter may briefly be summarized as follows :

(1) State policy in the field of labour is vague and indefinite; it is nothing more than a string of generalizations and pious hopes.

(2) Policy in the specific fields of wages, bonus, and productivity has been considered and found inadequate.

(3) Detailed studies on various aspects of payment by results in Indian industry should be undertaken; otherwise the mere advocacy of payment by results will prove ineffective.

(4) Industrial labour gets many times the wages of agricultural or artisan labour. Further increases in the wages of industrial labour must, therefore, be supported by cogent reasons.

(5) The present policy — such as it is — in respect of wages gives more to those that have and less to those that have not — an instance of the uneven impact of what is believed to be social justice.

(6) Social justice is an elusive and indeterminate concept, and while it cannot be defined in concrete terms, the cause of social justice would not be served by the State's concentrating all its efforts on a small, and comparatively prosperous, urban labour to the neglect of millions of rural labour.

(7) The labour policy of the Government gives but feeble support to the directive principles contained in the Constitution.

(8) There is consensus of opinion that so long as compulsory adjudication is available for the settlement of industrial disputes, collective bargaining will not take root and grow.

(9) In a political democracy practising industrial democracy, collective bargaining should be the king-pin of adjustment of labour-management relations.

(10) The earlier the policy of compulsory adjudication is reversed to that of collective bargaining, the better for the success of collective bargaining.

(11) If the industrial relations system must develop democratically and in a way conducive to long-term planning, it must be based primarily on collective bargaining and only to an inescapably small extent on compulsory adjudication.

(12) The change-over from adjudication to collective bargaining can be gradual and can coincide with the ten-year period suggested earlier for the elimination of outsiders from the executives of unions.
(13) After this change-over is effected, compulsory adjudication should be available only in what may be called economically important industries and in public utility services.
(14) Adjudication in the restricted field should be on a selective basis.
(15) It is necessary to develop and popularize a proper grievance procedure with voluntary arbitration as the final step.
(16) There should be only two types of tribunals of equal standing, one type set up by State Governments and the other by the Central Government.
(17) Permanent tribunals of adequate size should be set up in each State and in the Central sphere.
(18) Certain broad considerations in making appointments of chairmen and members of tribunals have been set out.
(19) So long as there is compulsory adjudication, the setting up of a high-powered Labour Appellate Tribunal is imperative.
(20) The scope for voluntary arbitration is briefly considered.
(21) A typical grievance procedure is discussed.
(22) The joint consultative machinery can work fruitfully only against a background of sound labour-management relations.
(23) There would be no particular advantage in having both a joint management council and a works committee in the same establishment, though there is no objection to having both.
(24) While joint consultation at the level of the unit in the form of works committees exists on a fairly large scale, even though it may not be very effective, and tri-partite consultation at the national level is both extensive and effective, the greatest deficiency in the machinery of consultation is at the industry level.
(25) Efforts should, therefore, be made to set up bi-partite industrial councils for consideration of problems arising at the level of the industry.
(26) There is no point in ignoring the fact that rationalization, particularly of machinery, means that for the same volume of output the volume of employment will necessarily be less.
(27) The Fiscal Commission's (1949-50) recommendation that "rationalization in all its aspects holds out the only hope of adjusting costs of production to the level of costs elsewhere, and maintaining the competitive position of Indian industries both in the domestic and external markets" has been proved true by events and is as valid today as it was in 1949.
(28) The employer's inability to adjust his labour force to the needs of his fluctuating business is a serious complicating factor.
(29) State policy in the matter of rationalization and productivity, which

has hitherto been halting and ambiguous, should be based on a study of the reasons for the low productivity of labour and its contribution to the stagnation of exports.

(30) Legislation should be undertaken to set up a new statutory authority which might be called the Rationalization and Productivity Tribunal. The Tribunal will adjudicate on disputes relating to such technical matters as fixation of workloads, settlement of details of incentive systems of payment, revision of standards, etc.

(31) The Tribunal should be assisted by an Institute of Rationalization and Productivity which would undertake the technical studies needed for the adjudication.

(32) A sympathetic strike, if called in support of workers in another industry or employment, amounts in part to a general strike and should be prohibited.

(33) The wholesale general strikes which take place, whether in support of the economic demands of workers in general or in support of political demands, should be declared illegal.

(34) The calibre of conciliation officers should be raised.

(35) All statutory provisions relating to the employment of the labour welfare officer should be removed from the law. All that Government need do is to ensure, through an adequate inspecting agency, that the prescribed labour welfare measures are being provided by employers.

(36) On the withdrawal of compulsory adjudication from particular industries, there may have to be a certain extension of minimum wage fixation depending on the state of trade unionism in the industry.

POSTSCRIPT

DURING THE two years, 1965 and 1966, that have elapsed between the writing of this book and its publication, many important events have taken place in the country and not a few significant developments in the industrial relations field, but none of them would warrant any material changes in the basic conclusions drawn in the last two chapters. On the other hand recent experience might even lend added and convincing support for the more important of those conclusions. It is in times of crisis that the afflictions of a system assume menacing proportions and become unbearably oppressive. The incursions of politics into the labour-management field become brazen and unconcealed during periods of economic distress and public privations; the outsider-leader's role becomes even less tenable and more objectionable than ever before; and rival trade unionism resorts to violent and headlong collisions in the exploitation of situations which might seem pregnant with partisan possibilities. These two years witnessed the eruption of the worst symptoms of these diseases in an acute form.

Deteriorating economic conditions is a fertile field for agitations and angry demonstrations. When the poor are hard-pressed by insufficient means, unconscionable prices, and inadequate and uncertain supply of essential commodities, even the most law-abiding sections of the public have no alternative but to protest openly against the inefficiency and ineptitude of a government which has brought things to such a sorry pass. But such a situation of natural and inevitable protest is a golden opportunity for those who, for ideological or other reasons, prefer to fish in troubled waters.

'A Supplement to the Economy Survey' circulated by the Central Government among Members of Parliament assembled for the Monsoon Session of Parliament in July 1966 gives a chilling official account of the deteriorating economic situation in the immediate past. The main Economic Survey presented to Parliament in February 1966 had already painted a picture of gloom by saying that 1965-66 had been a year of great strain all round, with a substantial fall in agricultural production and a slackening of industrial production. There had also been considerable deterioration in the financial position of the Central and State Governments at a time of continued pressure on prices and of a steadily worsening balance of payments position. Building upon this bleak picture, the Supplement goes on to say that inflationary pressures have continued unabated and that production has hit a new low. The production of foodgrains in 1965-66 was 72.3 million tonnes as compared with 89 million tonnes in 1964-65. During the acute food scare in the early part of 1966, the Food Minister went on guessing the size of the gap between production and requirements and, like a trained auctioneer, steadily

pushed up the size of the gap by a couple of million tonnes almost every week for the duration of the guessing game. The production of commercial crops like groundnut and raw jute also declined heavily. Agricultural production, as a whole, declined by 15 per cent over the levels of 1964-65. This was attributed wholly to an unprecedented drought. The decline of the commercial crops badly affected the jute and vanaspati industries. Hydro-electric power generation was also seriously affected because of the shortage of impounded water.

The cuts in the imports of essential industrial raw materials and components, which resulted from the emergency conditions created by the Pakistani aggression, badly hit many industries. Most engineering and chemical industries were affected. Industries based on non-ferrous metals all but ground to a halt. In the year 1965-66 the growth in industrial output was a mere 3.8 per cent as compared with a growth of 7 to 8 per cent during the previous five years.

The total deficit-financing of Central and State Governments in 1965-66 was Rs. 385 crores. This must have added considerably to the already high inflationary pressures existing in the economy. The magnitude of the deficit-financing mentioned above may be gathered from the fact that with the financial disciplines imposed to arrest the continued deterioration in the economy, the Central Government considered it necessary to stipulate that deficit-financing in 1966-67 should not exceed Rs. 32 crores at the Centre and Rs. 20 crores in all in the States. Despite this solemn resolve, deficit-financing in the first half of 1966-67 is reported to have gone up very high, unofficial estimates placing the deficit-financing at the Centre at well over Rs. 200 crores.

Exports declined from Rs. 816 crores in 1964-65 to Rs. 810 crores in 1965-66. The balance of payments gap which was Rs. 409 crores in 1961-62 and had jumped up to Rs. 763 crores in 1964-65 climbed still further to Rs. 438 crores for the first half of 1965-66.

All these developments had their inevitable effect on prices. During the first two years of the Third Plan, prices remained relatively stable, but there were sharp rises in the subsequent years. In the three years ending March 1966 the price level rose by 36.5 per cent. Wholesale prices of food articles rose by 42.1 per cent. The working class consumer price index rose by 33.8 per cent. Prices continued to rise between March 1966 and 4 June 1966 (on the eve of devaluation). The increase in the prices of food articles in this period was 8.6 per cent as compared with 4.7 per cent over a similar period last year. Prices have risen also since devaluation, but the extent of the rise is still a matter of current controversy.

The stagnation of exports, the continued and growing necessity for massive imports, and the ever-widening balance of payments gap had already, in previous years, called for a number of corrective measures including fiscal measures, export incentive measures, curb on foreign travel, steps to check

smuggling, etc. These proved not altogether effective and in some cases even open to abuse. As a result, Government was forced to change the par value of the Indian rupee from Rs. 4.76 to a dollar to Rs. 7.50 to a dollar with effect from 6 June 1966. We shall not here enter into the controversies attending devaluation, but it is necessary to point out that an economy with a galloping inflation cannot be put on its feet by devaluation alone, that a deliberate and coordinated plan of austerity to control and restrain, if not freeze, prices, wages, dividends and other incomes is necessary as one of the many inevitable emergency disciplines required to meet the situation and that if stern measures for this purpose are not taken, the economic situation would only become doubly worse after what has widely been criticized as an ill-advised devaluation. The fact that a Labour Government in the United Kingdom has, at this very juncture, been forced to adopt similar measures to strike at the core of inflationary pressures with a view to "saving the pound" -measures, voluntary at first and statutory later on, which the British Prime Minister described as unprecedented in the history of Britain– shows that inflation is no respecter of governments and that a socialist government, no less than a conservative one, may be compelled to swallow the bitter pill of a wages-dividend-income freeze even before the rising prices have been brought under any real control.

So much for the economic position in the immediate past which has been steadily deteriorating and has not, as yet (last quarter of 1966), shown signs of recovery. It is against this background of growing gloom and deepening despair that we must view the recent developments on the industrial relations front

Involvement in Political Agitations: A matter of considerable concern and disquiet to every believer in the orderly development of labour-management relations in the country is the growing tendency on the part of political parties to use workers as pawns in the political game—as the spearhead of their offensive against the government of the day or against other interests they wish to oppose or overawe. This is a legacy from the British days when the Indian National Congress freely used industrial workers to stage massive 'hartals' and strikes in its offensive against the foreign government. But weapons forged and perfected for a particular purpose will, unless they become obsolete or ineffective, be readily brought out and turned against the very persons who forged them in subsequent campaigns started by their opponents. And so it is that weapons such as general strikes, mass demonstrations, "bandhs", hunger-strikes "unto death", and similar highly coercive measures are used these days against the Congress Governments by their political opponents and occasionally even by their own dissident groups.

A new streamlined word "bandh" has replaced the old-fashioned "hartal" to describe the complete paralysis of all economic and public activities sought to be achieved by the sponsors with a view ostensibly to high-lighting some

grievance or other of the public. The grievances sought to be high-lighted are sometimes economic, sometimes entirely political. But whatever the objective, the industrial workers form the spearhead of the offensive. Every industrial establishment, shop, office, eating place, or other place of economic activity is forced to close down regardless of inconvenience to the public. Educational institutions are induced or urged to join in. Public transport vehicles cannot ply, either because their staff join in the strike or because moving vehicles are stoned to a halt. Invariably and despite, let it be assumed, the good intentions of the sponsors, most of the "bandhs" lead to violence and destruction of property besides causing heavy loss to the national economy.

There was, for instance, the "Bengal Bandh" in the second week of March 1966 arising from the food agitation, that is, over inadequate supply and high prices. Serious disturbances occurred in the industrial areas. Trains were attacked and coaches set on fire. Numerous cases of arson were reported. The movement of ships in the busy Calcutta port came to a standstill. Air services were seriously affected. Railway stations and post offices were attacked. Pitched battles took place between mobs and the police. The police opened fire at different places. 14 persons were killed on the first day and 5 persons on the second day. The Home Minister of the Central Government spoke of the "total lack of purpose and responsibility" behind the agitation and criticized the "attitude and activities of certain groups", who, he said, had yet to realize that problems could not be solved by having recourse to violence, disorder and interference with the normal life of the citizens.

This, in general, is the pattern of "bandhs". The duration of the protest may vary from one day to several days, the cause from purely economic to purely political, and the damage from a few instances of stone-throwing to large-scale violence, arson, and destruction. The one-day strike (not elevated to a "bandh") of Bombay Textile workers called on 29 December 1965 was largely peaceful, barring two minor incidents but more than 60 per cent of the textile workers joined in the strike. This was over payment of bonus for 1964, the re-employment of unemployed 'badli' workers, the re-opening of certain mills which had closed down, and the threatened reduction of the dearness allowance. The strike was called by an unrecognized union over the head of the recognized union. At the end of the day the sponsors, patting themselves on the back, declared that if the Government did not change its wrong pro-management policies, "the Union and the Party were capable of starting a 'Bharat Bandh' action". Thus it was a mere prelude to things yet to come.

A more prolonged strike in the Bombay textile industry was called by the same union on 28 February 1966 on the two subjects of bonus and dearness allowance. After a few days the strike had to be called off.

Kerala staged its own "bandh" on 28 January 1966 on the question of restoration of the rice ration. As usual, trains were stopped and looted. A

relief train with armed guards "was not allowed" to proceed to the area by another mob. As a touch of refinement the practising advocates, barring the Advocate-General and the Government pleaders, refused to attend the courts. Acting in line with the occasion, the police opened fire at two places, but we are reassured that "the first firing was into the air."

A "Bombay Bandh" planned for 31 May 1966 by a labour leader over the boundary question between Maharashtra and Mysore did not actually take place as the politicians immediately concerned with the issue temporarily settled their scores otherwise. Had it taken place, it might well have been a model of a "bandh" as it had been announced that "the endeavour of the organizers would be to turn Bombay into a 'ghost city' to press for the immediate inclusion of Marathi-speaking border areas of Mysore in Maharashtra." That leaders intimately connected with the trade union movement should resort to such direct and vigorous political action is a measure of the inter-linking of trade union and political interests. The reference to a 'ghost city' was truly apt as there was to be no electric supply at all and lights, lifts, water supply, and everything else depending on electricity were to be put to sleep for the duration.

A political party announced in the middle of June 1966 that "the present situation was ripe for a 'Bharat Bandh'" and that "units of the party, in cooperation with other parties and trade union organizations, had been asked to work in that direction."

Several other "bandhs" have taken place in recent months. The U.P. bandh witnessed the unusual spectacle of paralysis of the functioning of the State Government's offices caused by Government employees. A Bombay bandh in August 1966 led to violence. The very latest in the bandh series is the one in Andhra Pradesh to force the Central Government to announce the location of the fifth steel plant in that State if we leave out of account the Sadhus' assault on Parliament.

Our object in focussing attention on this problem is to emphasize the great harm that is being done to the trade union movement by its being dragged, willy-nilly, into every political agitation that is launched in the country. It might be argued that many of these "bandhs" and agitations are not directed against industry as such and that industrial workers simply take part in them as public citizens. This may be a legalistic way of explaining away their participation, but two points cannot be ignored. First, industrial workers are the spearhead of all such agitational groups and without their participation, the movement must end in failure. Secondly, industry gets completely paralyzed; the loss of production is very serious. In its results, a "bandh" is far worse for employers than even an industry-wide strike. In the latter, at least some units might attempt to work, but in a "bandh" public emotions would have been worked up to such a pitch that no employer would dare to work for fear of the public wrath or at any rate of the enforcement squads armed with a generous supply of stones.

Violence: Violence in the conduct of strikes and in the settlement of industrial disputes goes on unabated. True, violence is not confined to industrial disputes, but it has become an increasing feature of the industrial scene. The Employers' Federation of India drew the pointed attention of the Maharashtra Government to the growing incidence of violence in the industrial suburbs of Bombay, but the Federation got no satisfactory response. In March 1966 the Federation of the Indian Chambers of Commerce and Industry said in a press statement that "the entire business community of the country, as must be all reasonable and patriotic people, are greatly perturbed over the recent happenings in various parts of India, which have manifested themselves in wanton destruction of property, violence and brutal acts of sadism, arson and murder. Whatever may be the causes of these, be they industrial unrest, difficult food situation, differences over language or State boundaries, such acts cannot be tolerated by any civilized society under any circumstances." At about the same time the Prime Minister announced that "she would not hesitate to use any kind of force to quell the violence now rampant in parts of the country." But unfortunately violence has gone on unchecked.

Two typical cases of violence, one on the Bombay side and the other on the Calcutta side, might be cited to show that neither legal methods through conciliation and adjudication nor constitutional methods by way of a peaceful strike hold any attraction for impatient unions trying to enforce their demands. The former relates to the 51-day strike at the construction site of the Tarapur nuclear power plant. The rivalry between two unions of different affiliations for capturing the virgin field was at the bottom of the whole trouble. It is not necessary for our purpose to go deeply into the details, but it may be mentioned that an agreement entered into by what claimed to be the majority union with the management was sought to be torn up by the other union. The latter called an indefinite sit-down strike from 10 December 1965 to protest against what it considered a "sweetheart agreement" between its rival and the management. For 18 days the workers sat down quietly, but it was too much to expect them to continue so peacefully indefinitely. The result was that workers indulged in violence and smashed up the canteen. That was the signal for other cases of violence. The police opened fire and nine workers were killed.

The second case relates to the Government steel plant at Durgapur. On 6 August 1966, the workers staged a demonstration for increased rates of dearness allowance and bonus and the reinstatement of suspended and retrenched workers. They had already virtually imprisoned the general manager of the plant for several hours on the previous day. With a view to enforcing a total strike, the workers surrounded a convoy of buses which was being escorted by the police and set fire to fourteen transport buses. The police had to open fire and one person was killed.

Violence cannot but do irreparable harm to genuine trade unionism. It

may be useful for certain political purposes, but if our workers hope to build up a healthy system of labour-management relations based on parliamentary democracy, violence is not the method of advance. It is possible that when the dominating and constricting influence of the outsider-leader is removed from the system as advocated in these pages and responsible collective bargaining comes into vogue, the inside leadership might be able to recognize what is in the interest of genuine trade unionism and what is not.

Problem of the Representative Union: The two cases already mentioned above, namely, the Bombay Textile Strike in February-March 1966 and the Tarapore strike in December 1965 raise once again the question of the effectiveness of the representative union, as certified by present methods. In the Bombay textile industry, the Rashtriya Mill Mazdoor Sangh, affiliated to the I.N.T.U.C., is the industry-wide representative union, while the Girni Kamgar Union, affiliated to the A.I.T.U.C., which must, therefore, be a smaller union, is always the one to call strikes. At Tarapore, a union organized by Congressmen (there is some doubt whether it was formally affiliated to the I.N.T.U.C.) was certified as the representative union while the one which called the strike had failed to prove its membership before the verifying officer.

Thus here are two "representative" unions which have failed to deliver the goods. That is also the case with several other unions certified by present methods to be "representative". The method of certification, or at any rate the basis thereof, is obviously defective We have dealt with this matter in the earlier chapters where we have suggested election through secret ballot. One other point which might be mentioned is that it is necessary to involve the membership of a representative union more and more in its working and in its achievement and results. Unless members come to regard the union as their own, in which they have a deep stake in success and in failure, they might be inclined to trifle with their loyalty to the union. Such deep involvement is possible only where a strong union fights constructively, through collective bargaining and tri-partite negotiations, for securing for its members tangible results. Thus loyalty is tied up with the basic question of labour-management relations, namely, whether collective bargaining or adjudication should hold the field.

Code of Discipline: This subject was set down for discussion both at the 23rd Session of the Indian Labour Conference held on 30 and 31 October 1965 and at the 24th Session of the Standing Labour Committee held on 13 and 14 February 1966, but consideration had to be postponed for want of time. At a Seminar on the Code of Discipline held in August 1965, the Labour Minister said that the Code had introduced a "positive approach" to the country's industrial relations. He admitted, however, that the number of man-days lost had risen to 77 lakhs in 1964 as against 32.7 lakhs in 1963

and 61.2 lakhs in 1962. He attributed the increase to various causes such as a steep rise in the prices of foodgrains, delay in the implementation of the recommendations of the Bonus Commission, delay in the implementation of the interim awards of wage boards, etc. Surely it would not be proper to plead these as extenuating circumstances, for industrial unrest is always occasioned by some cause or other and the Code was evolved to deal with all of them. The Minister also said: "If by the influence of the Code, the use of violence in industrial relations or coercion, intimidation or victimization, or rowdyism in demonstrations, or unfair labour practices disappear or are reduced, it should be regarded as a happy augury." The fact that he did not claim that such a happy situation already existed is significant.

During the general discussion at the 23rd Indian Labour Conference, the representative of the Employers' Federation of India said that the Code of Discipline was an imperfect instrument and that "there are bound to be cases where it will be ignored. It must come naturally. It should come through evolution."

State of Industrial Relations: The Labour and Employment Ministry's annual report for 1964-65 referred to the sharp rise in the number of man-days lost in 1964, which was given as 73 lakhs as against 33 in 1963. It said that there had been a weakening of the influence of the Industrial Truce Resolution on labour relations. The main factors contributing to such weakening were inter-union rivalry and economic factors. Referring to joint management councils as a sobering element contributing to better labour-management relations and increase in productivity, the Report said that "there was reluctance on the part of both the employers and workers to make the scheme a success." The Code of Discipline had its own limitations since the developments in the economic sphere had their repercussions on the industrial relations situation.

Simultaneously with the publication of the annual report, the Labour and Employment Minister inaugurated the third conference of the Textile Workers' Asian Regional Organization and referred to some of the problems of labour in developing countries. He said that the socialist order of society, which countries like India had accepted as the goal of national policy, could be realized only if trade unions cooperated fully in implementing the plans of economic development and in assuming greater responsibility for the success of the productive effort. Since a good part of the battle of the working class had been taken over by the nation itself in some of the developing countries, solutions to labour problems had to be found less through militant methods and more and more through cooperation and consultation.

Bonus: The Payment of Bonus Act, 1965 has, as expected, led to considerable strife and litigation. The Bombay textile strike in February-March 1966 had as one of its two main demands the immediate payment of bonus to

workers for 1964. That was at a time when the glut of stocks was a problem and many mills were in serious financial difficulties. Establishments which had bonus disputes pending before industrial tribunals were required, under section 33 of the Act, to pay bonus for the three previous years 1962, 1963 and 1964 in accordance with the Bonus Act. Establishments which would have escaped payment altogether under the Full Bench Formula for want of profits were now compelled to pay the minimum bonus laid down in section 10 of the Act. Other employers who were required to pay much higher rates of bonus than was laid down in the general scheme of the Act because of the special "past payment practice" provision contained in section 34(2) of the Act were equally inclined to protest.

The constitutionality of various provisions of the Act was, therefore, taken up for judicial decision before the Supreme Court by certain affected employers. The Supreme Court has, by its judgment delivered on 5 August 1966, declared invalid sections 33, 34(2) and 37 of the Act. On the other hand it has held section 10, enforcing payment of minimum bonus, valid. The decision of the Court was by a majority of 3 to 2.

Section 10 has been held to be valid on the ground that it is an integrated part of a scheme for providing for the payment of bonus at rates which do not widely fluctuate from year to year. Since the object of the Act is to ensure peace and harmony between labour and capital, the scheme of prescribing maximum and minimum rates of bonus together with the scheme of 'set off' and 'set on' not only secures the right of labour to a share in the prosperity of the establishment but ensures a reasonable degree of uniformity. In this light the payment of minimum bonus cannot be said to be discriminatory between different establishments which are unable, on the profits of the accounting year, to pay bonus merely because a uniform standard of minimum rate of bonus is applied to them. The distribution of profits, which is not subject to great fluctuations year after year, would certainly be conducive to the maintenance of peace and harmony which is the main object of the enactment. This would be regarded as equitable even if the establishment has not earned any profit. The section is also not open to attack under clause (1) of Article 31 of the Constitution which guarantees protection against depriving a person of his property inasmuch as such protection is available only if the deprivation is not by authority of law. Where Parliament validly enacts a law which may be deemed to have the effect of depriving a person of property, the protection is not available. Thus one of the contested provisions of the Bonus Act, namely section 10, has been held to be valid.

By the application of section 33, the scheme of the Act is related back to three accounting years ending on any day in 1962, in 1963, and in 1964. In the event of a dispute pending in respect of any of those years, this provision creates an onerous liability on the employer. Employees who could not have claimed bonus under the Full Bench Formula become entitled to it merely because there was a dispute pending before certain authorities. The

liability imposed by the Act for payment of bonus is more onerous than the liability under the Full Bench Formula. The imposition of the more onerous liability depending solely upon the fortuitous circumstances that a dispute relating to bonus is pending before certain authorities immediately before 29 May 1965 is, according to the Supreme Court, plainly arbitrary and the classification made on that basis is not reasonable. Two establishments similarly circumstanced, one having a pending dispute and the other not having any such dispute, would be subjected to different and hence discriminatory treatment. Moreover if a dispute is pending before the Supreme Court or a High Court in appeal or in writ petitions, the provisions of the Act would not apply. This again is illogical. The Supreme Court, therefore, held section 33 "patently discriminatory".

Section 34(2), in the Supreme Court's view, contemplates a complicated inquiry into the determination of gross profits of the base year. Apart from the complexity of the calculations, the ratio referred to in the sub-section may be unduly large or even infinite. The Court said: "If the concept of bonus as an equitable share of the surplus profits of an establishment between the three agencies (capital, management and labour) which contributed to the earning has reality, any condition that no alteration can be made of the ratio on which the share of one party was computed on the basis of the working of an earlier year taking into consideration the special circumstances which had a bearing on the earnings of the profits and the payment of bonus in that year is both arbitrary and unreasonable." Section 34(2) has been held to be invalid on the ground that it infringes Article 14 of the Constitution.

The Court has also held that section 37, which authorizes the Central Government to provide, by order, for the removal of doubts or difficulties in giving effect to the provisions of the Act, delegates legislative power which is not permissible. That section has, therefore, been held to be invalid.

Notwithstanding the invalidation of these three sections, the rest of the Act has been held to be valid. The main scheme embodied in the Act has thus emerged unscathed. Even so, workers and their organizations are greatly agitated over the Supreme Court's decision. It will have the effect of denying to certain workers payment in respect of previous years. Establishments which would not be required to pay bonus under the Full Bench Formula would now not be bound by the minimum bonus provisions of the Bonus Act in respect of previous years. Even more important, the protection of past practice embodied in section 34(2), which would have continued indefinitely in future, has been withdrawn.

The Supreme Court's decision has moved the bonus question back to the agitational arena. Unions have been clamouring for special legislation, including, if need be, an amendment of the Constitution, which would restore to workers the benefits taken away by the Supreme Court's decision. Employers' Organizations have opposed these moves for nullifying the Supreme Court's decision. Amendment of the Constitution for such a purpose

would not be free from controversies. The Central Government consulted the State Governments and called a special meeting of the Standing Labour Committee on 26 October 1966 to consider the matter. Though no specific proposals were placed before the Committee, the Labour Minister is said to have "appealed to the employers' representatives to honour whatever higher bonus workers were getting under agreements before the coming into force of the Bonus Act." After discussion, the Standing Labour Committee set up a bi-partite subcommittee to evolve an agreed formula in regard to the matters affected by the Supreme Court's decision. The employers' representatives agreed that pending the report of the subcommittee the higher bonus the workers were getting in certain establishments under prior agreements should be honoured, notwithstanding the Bonus Act.

Truly the Bonus Act has been born under an ill-omened star of mounting struggle.

It is interesting here to note an opinion expressed by the veteran labour leader and former Central Labour Minister (now Governor of Mysore), Shri V. V. Giri, in regard to bonus while inaugurating a seminar on bonus law organized by the Madras Productivity Council in April 1966. He gave it as his personal opinion that "we should have to discourage the idea of bonus and do away with it, if not immediately but in the long run." He admitted, however, that the idea of bonus had come to be accepted by the workers, the employers and the Government as a "necessary and inevitable payment." As bonus was a fluctuating payment, Shri Giri felt that it would be much better to face the problem of assuring fair wages and a living wage to the worker squarely than to adopt payment of bonus as a method of meeting the gap between the present wage levels and a living wage. He added: "However much you say that the workers are entitled to a share in the prosperity of the undertaking, the employers have not conceded this idea nor will they concede it as such. To them it will always be a kind of *ex gratia* payment."

The Wage Problem: There has been no major development in regard to this problem, but there has been a persistent demand from employers' organizations for recognition of their plea that in an economy of uncontrolled inflation, the mechanical system of linking the dearness allowance with the consumer price index is self-defeating and that the only safe way of ensuring higher real emoluments is to relate them to increased production or productivity. Equally strong is the demand from workers' organizations that because of the continuous increase in prices, workers' wages are constantly being eroded and that it is imperative that dearness allowance be linked to the consumer price index everywhere in the country. This is an interesting situation in which two contradictory suggestions have been made, both purporting to relate to inflation but dealing with different aspects of it. We have discussed the subject of dearness allowance and inflation in Chapter XI dealing

with wages and bonus. There we have indicated that where wages are increased because of a rise in the cost of living, there is always a rise in unit labour costs and that if this is done on any extensive scale, it will directly contribute to large-scale inflation. In such a situation we have suggested that much of the increase in wages would have to be won directly through higher productivity. Unfortunately for the country as a whole, India Productivity Year, 1966, has coincided with abnormal conditions in the country and with an enforced slowing down, for want of imported raw materials and components, of the tempo of industrial production. In a period of lay-off and retrenchments, the enthusiasm for productivity cannot be sustained. When the United Kingdom, which is in a far better position economically than India, has been bold enough to announce an unpalatable package deal of a six months' wage freeze and a twelve months' price and dividend freeze, we in India have been content with saying that there cannot be a wage freeze so long as prices and dividends are not frozen and that our ability to check prices is not free from doubt.

It is surprising that the Prime Minister has had to take the opportunity of the final consideration of the draft of the Fourth Plan (Planning Commission's discussions of 10 August 1966 officially released) to make the following comments: "I think we should not dismiss pricing policies as briefly as it is done. Whether we say that the prices will remain stable or whether they will be used as an instrument of economic policy, we should be able to say something which is credible. It should carry conviction .... There is a reference to limitation of dividends. We may better talk of a wages-price-profits policy. We should have a programme worked out." A good two months after devaluation, when everybody has been shouting about inflation and rising prices and when political parties have been planning for agitations and "bandhs" to focus the attention of Government on spiralling prices and growing unemployment, it is left to the harassed Prime Minister to call the attention of the Planning Commission and of Government to the need for a wages-price-profits policy. It is difficult to believe that a "policy" put together under the urgency of high-level persuasion has any chance of survival except in the printed pages of the Fourth Plan.

Decisions on the wages front tend to be dictated more by political than by economic considerations. At a time when inflation is playing havoc with the quantum of dearness allowance, there may be a case for the grant of interim relief by wage boards on a selective basis but clearly not in the manner in which the Union Government has approved of such grant in the case of the engineering industries. Interim relief has been recommended to be given notwithstanding the absence of a unanimous recommendation of the Board. The relief is to be given on the basis of the emoluments earned, regardless of whether such emoluments are high or low for a particular category of workers in a particular establishment. If, for instance, two workers belonging to the same category and doing identical work in two establishments receive entirely

different emoluments, one of which being inadequate and the other more than adequate, both are to get interim relief though at slightly different rates. A fitter gets, let us say, monthly emoluments of Rs. 200 in one factory and of Rs. 300 in another for identical work. Both must get interim relief, notwithstanding the fact that the emoluments of the latter may be more than adequate. Wage Boards have been functioning more on the basis of consensus than on that of fixed principles. This may not matter so long as the recommendations are unanimous as these could then be treated as an extension of collective bargaining and they need not be based on accepted standards or principles. *Ad hoc* decisions would, however, be unacceptable where there is no unanimity. Even an establishment in which wage scales have only recently been fixed by a tribunal after elaborate enquiry must pay interim relief, not because the wage scales are low and the workers cannot wait for the next instalment of advance until the completion of the wage board hearings but because the general formula of interim relief requires that everybody should get something. According to press reports one central organization of labour has threatened to withdraw from the wage board if the majority recommendations in regard to interim relief are not speedily implemented. All that need be said here is that nobody seems to be anxious to evolve a policy of equitable sacrifice, rather than one of equal rights, at a time when the raft of State threatens to sink under the combined weight of inflation on the economic front and of mass agitation on the political front. In this context a rational wage policy seems almost to have become an outmoded concept of a bygone yesterday.

Discipline in Industry: A proposal to amend the Industrial Disputes Act "to empower Labour Courts and Tribunals to review cases of dismissals and discharges of workers after domestic enquiry" was the subject of heated discussion at the 24th Session of the Indian Labour Conference held in July 1966. The employers' representatives stated that they had never agreed to the entrusting of industrial tribunals with greater power than existed at present under the rulings of the Supreme Court to adjudicate on the appropriateness of punishments awarded by managements in domestic enquiries. The proposed amendment, they said, would make the life of employers "miserable".

The Supreme Court's ruling on the scope of interference by industrial tribunals is summarized in the case of *Indian Iron and Steel Company Ltd.* vs. *Their Workmen*[1] as follows:

"Undoubtedly, the management of a concern has power to direct its own internal administration and discipline; but the power is not unlimited, and when a dispute arises, industrial tribunals have been given the power to see whether the termination of service of a workman is justified and to

[1] 1958 I. L.L.J. 260.

give appropriate relief. In case of dismissal on misconduct, the tribunal does not, however, act as a court of appeal and substitute its own judgment for that of the management. It will interfere

(*i*) when there is want of good faith,
(*ii*) when there is victimization or unfair labour practice,
(*iii*) when the management has been guilty of a basic error or violation of a principle of natural justice, and
(*iv*) when on the materials the finding is completely baseless or perverse."

These restrictions still leave the employer with a fair amount of legitimate freedom to come to reasonable findings on the evidence recorded and to settle the nature and extent of punishment. This freedom would be taken away from the employer if tribunals were required to substitute their own judgments for that of the employer. No wonder employers' organizations have protested that "discipline in industry will be completely undermined by such a provision." The very lax discipline that now exists in our industry must be experienced to be believed. Increased indiscipline means necessarily decreased productivity.

Rationalization and Automation: The struggle against rationalization continues though it is no longer a news-maker as it used to be some ten years ago. Instead automation has begun to occupy the centre of the stage. The arguments for and against automation are more or less the same as those employed in the case of rationalization. The arguments of trade unions are that in a country with massive unemployment it is wrong to snatch away employment from workers and to surrender it to automatic machines and that a great reduction in employment opportunities will be the result of automation. The arguments of employers are that in the modern age when every other nation is taking advantage of automated methods for raising productivity and improving performance, it would be a retrograde step for Indian employers alone to lag behind. After all, Indian goods must compete in world markets and cannot afford to be non-competitive.

The agitation against automation has assumed particular seriousness in the campaign which the employees of the Life Insurance Corporation have been waging against the installation of computers by their management. The management has assured the employees that not one of them will be retrenched, but this has not satisfied them. They say that this would affect the further employment potential.

Labour-saving and cost reduction programmes are necessary not only for export-oriented industries but for all industries and services. The benefits of cost reduction accrue to the community at large. When goods and services are sold cheap, the demand for them will increase and with it the volume of employment. This has been the experience of all countries which have been

in the forefront of rationalization and automation. Automated industries like the automobiles and oil industries have in America and elsewhere expanded beyond all expectations. In England and in Western Germany, the highly-automated engineering industries have been steadily expanding and offering increasing employment.

The National Commission on Technology, Automation and Economic Progress set up in the United States has, after detailed examination, rejected the contention that automation has caused, or is likely to cause, overall unemployment. The Commission said: "The basic fact is that technology eliminates jobs, not work.... A society can choose to reduce the growth of productivity, and it can probably find ways to frustrate its own creativity. We believe this choice to be utterly self-defeating in its impact on living standards and wages. Although a reduction in the growth of productivity at the expense of potential output might result in higher employment in the short-run, the long-run effect on employment will be uncertain and the long-run effect on the national interest would be disastrous." As regards less advanced countries the Commission says that "Technology, which is one of the chief means of increasing productivity, can find its greatest applications in these countries." On the economic aspect of automation the Commission has said: "The evidence is overwhelming that technology stimulates the rate and volume of economic growth, and that the infusion of new technology can spread the rate of economic growth."

The British Trades Union Congress has accepted automation subject to safeguards. In a recent pamphlet the Trades Union Congress has said that the rate and extent of technological change in all industries is likely to grow during the next 10 to 15 years, that improvement in workers' standard of living is achieved more easily in technologically advanced countries than in others and that technological changes would lead to better wages.

An important research work on "Automation in Manufacturing" made by Professor Charles C. Killingsworth of the Michigan State University, East Lansing, says that most of the case studies of the effects of factory automation relate to the short-run and to the plant or company studied. "There is considerable agreement that there have usually been substantial reductions in manpower requirements per unit of output, but that jobs have almost always been found elsewhere in the plant for those displaced on the particular operation." He adds that in some plants "total employment increased somewhat (despite internal displacements) where there was a sharply rising demand for the product."

This research work is of interest to expanding underdeveloped countries. It is obvious that automation may reduce either the actual volume of employment, or at any rate the employment potential, in the establishment resorting to automation unless the process is accompanied by substantial expansion. A shrewd management could avoid actual retrenchment of workers by installing automated plants during a period of substantial expansion. The

higher productivity of a series of plants must give rise to much expansion of activity which would otherwise not have come about. In a developing country there is no immediate limit to expansion and progress, and hence the effect of automation would be to create fresh opportunities either in the same or in allied sectors of the industry. This may not necessarily be the case in a highly-developed industrial country where the scope for all-round expansion may be limited. In a developing country, therefore, there is no fear that the total volume of industrial employment will not increase even if there should be some reduction in particular establishments.

What has been mentioned above refers to rationalization and automation in manufacturing industries generally. The problem of the computer is a special one as the general impression held is that a computer working out results at fantastic speeds can throw out of employment large numbers of clerical employees and that if this change-over finds increasing application, the total volume of clerical employment will be substantially reduced.

An instructive article on 'Computers and Employment' contributed to the *Economic Times* of 9 November 1966 by Professor John Dearden of Harvard University, currently at The Indian Institute of Management, Ahmedabad, may be read with considerable interest and profit. He has, first of all, referred to a number of uses of the computer for specialized purposes which have virtually no effect on employment and are aimed at doing a job better than at present. Among these he mentions the use of computers by scientists to perform complex calculations not possible otherwise. He also refers to the doing of technical jobs, such as the designing of transformers, by computer calculations rather than by manual methods. This would release many engineers and engineering technicians for other purposes where they are badly needed. The computer can also be used with advantage for purposes of top management planning such as deciding where to build new facilities out of a score or more of possible locations, finding the optimum balancing of various inter-dependent facilities, and controlling operations particularly in the areas of logistics and inventory balances. In these areas the Professor says that "the benefits from computerization are so important to the development of the Indian economy that it would be most unwise to place arbitrary restriction on the use of computers, assuming that they can be justified economically through doing a necessary job better."

Moving on to the more controversial area of computer applications tending to replace clerical personnel, he says that there will be a time in almost every large business or Government agency "when the reducing cost of automatic computation will cross the increasing cost of manual data processing" and that "this is the optimum time to acquire a computer". When the installation of a computer is economically justified, he says it would be unwise to delay installation on the ground of the admitted decrease in the number of clerical jobs, because the longer it is delayed, the greater the magnitude of the problem of displacement of clerical workers. The effect on employment would be the

minimum at the optimum point. The clerical employment in the particular companies that acquire computers will, no doubt, be affected, but as the installation of computers will be very gradual, the total impact on the general level of clerical employment will not be significant.

The conclusion drawn is that computers should be used only when they can do specialized jobs of the types mentioned or when their use becomes economic but that their use should not thereafter be delayed on the ground of an immediate reduction in employment as they "will contribute to the increased productivity and prosperity that is sure to occur over the next few years."

It would be interesting here to recall, for the benefit of those who oppose mechanization and automation on the ground of its hurting the poor and the unemployed, what Lenin said and did in the few years that he lived after the October Revolution of 1917. Russia was essentially an agricultural country; her industry was quite small, backward and over-worked as a result of the Great War and the following civil wars. The vast rural population was extremely poor and suffered great privations. Food was scarce and prices high. Employment was the greatest need of the times and could not be sacrificed at the altar of modern technology. And yet Lenin, with his great vision, looking far ahead of his own times and visualizing glories for the country which none else could even suspect, insisted on the socialist economy's using all the latest achievements of science and the most advanced technology. His official biography says (page 483): " 'We must introduce more machines everywhere, go over to the employment of machinery wherever possible', he said. While raising the general productivity of labour, work must be made easier, he stressed, by shifting the burden of heavy labour onto the machines and leaving only the adjusting of machines to the worker. Lenin advocated the study and use of all the latest foreign methods in science, technology and technical organization. He said it was useful to learn from the capitalists, wherever necessary, and to adopt the worth-while and profitable things they had."

Lenin gave the most vigorous support to important innovations such as coal-cutting machines, hydraulic extraction of peat, electric ploughing, etc. He did not pause to consider whether the machines he introduced would rob men of their jobs. He must have been so certain of the long-run effects of mechanization and modernization in a rapidly developing country that he did not have to be apologetic about their short-run effects.

Whether we turn to capitalist countries or to communist countries, the story is the same: no modernization, no progress. Present-day U.S.S.R. constantly aims at the adoption of the latest techniques in production and management and shows up labour redundancy figures as a sign of progress. U.S.S.R. knows that if the very latest techniques are not adopted, she will not be able to catch up with, much less surpass, the U.S.A.

The most common argument urged in our country against rationalization

and automation is that our unemployment problem is colossal and that nothing should be done to add to the magnitude of the problem. Our unemployment problem is of such gigantic proportions that it cannot be tackled, or even nibbled at, by mere obstruction to modernization. If it can at all be solved in the foreseeable future, the methods will have to be totally different. There can be no salvation except in a rapidly developing economy —which development will be facilitated, and not obstructed, by modernization and employment of the latest techniques. No doubt, the type and degree of modernization required in an industrially backward country will be quite different from that required in a technologically advanced country, but the principle is the same, namely, that modernization suited to one's stage of development and level of skill and resources is inevitable and should not be resisted. By shackling industry to the techniques of a bygone age we are certainly killing the goose that might eventually lay the golden egg. Had Russia thought on the lines of labour-intensive industries after the October Revolution, where would she have been by now? Certainly not in space—almost as the leader in this fantastic race. She might not even have survived the German onslaught during the Second World War. On the other hand Lenin, who greatly admired scientists, engineers and inventors, said: "If we only could provide all these technicians with ideal conditions for work! In twenty-five years Russia would be the leading country in the world." H. G. Wells, visiting Lenin in the autumn of 1920, was greatly impressed by Lenin's plan for the electrification of Russia, which he called "a Utopia of the electricians." Wells wrote:[3] "Can one imagine a more courageous project in a vast flat land of forests and illiterate peasants, with no water power, with no technical skill available, and with trade and industry at the last gasp? .... I cannot see anything of the sort happening in this dark crystal of Russia, but this little man in the Kremlin can; he sees the decaying railways replaced by a new electric transport, sees new roadways spreading throughout the land, sees a new and happier communist industrialism arising again." But even Lenin did not probably realize that what he was doing would assuredly lead to what he was wishing and hoping for. Only a Lenin could have planned so decisively, so far-sightedly in the midst of hunger and suffering; only he could have lived for the future of his dreams in face of an almost annihilating present.

Labour-Management Cooperation: The latest review of the scheme of Joint Management Councils is the one contained in the memorandum placed by the Central Government before the 23rd Session of the Indian Labour Conference held in October 1965. According to that memorandum, Joint Management Councils had been set up in 99 industrial undertakings by October 1965, of which 34 were in the public sector and 65 in the private sector. Evaluation

[3] H. G. Wells: *Russia in The Shadows*, London, pp. 137, 138.

studies in 30 undertakings in which Joint Management Councils functioned were undertaken during 1961 and 1962. According to the memorandum "the studies have shown that Joint Management Councils are an important instrument of labour policy contributing to healthier economic growth and industrial progress and that wherever the Councils have worked in the true spirit, they have resulted, in varying degrees, in better industrial relations, a more stable labour force, increased productivity, reduction in waste, better profits and closer understanding between management and workers."

The memorandum goes on to say that "the main obstacle in the progress of the scheme is the attitude of the employers, both in the private and public sectors. Industrial management, by and large, appear to be sceptical regarding new ideas and do not take kindly to change. Some employers have an apprehension that Joint Management Councils will make inroads into purely management functions."

What the memorandum does not explain is whether the benefits noticed in establishments in which Joint Management Councils have been functioning properly are the result of such good functioning or whether Joint Management Councils have proved a success only in establishments in which good industrial relations and attendant advantages have always prevailed. It goes without saying that good relations and good procedures go hand in hand, and are interdependent. If hard-headed businessmen can be truly convinced that such excellent results can flow from working the scheme of Joint Management Councils "in the true spirit", one can safely hazard the guess that businessmen will be mad about getting the scheme started in their establishments. Employers are practical enough not to insist too vehemently or closely on their so-called managerial prerogatives. If then they are not attracted by the scheme, there must be other reasons for their indifference.

Shri Sanjivayya was the Labour Minister when this memorandum was prepared. So he must be deemed to have accepted the observations contained in it. In June 1966, by which time he had relinquished the Labour Ministry and taken over as the Union Minister of Industry, Shri Sanjivayya had a slightly different story to tell while inaugurating the Fourth All-India Seminar on Public Enterprise. He mentioned that one of the most important prerequisites to successful participation by workers in management was the existence of a strong recognized union. Then he said that the reason why managements in most public enterprises did not cherish the idea of Joint Management Councils was that workers were not equipped to take part in management functions and that it would be wrong to give them authority without responsibility. This was somewhat different from the Labour Ministry's diagnosis that employers were reluctant to part with their prerogatives. The Industry Minister went on to say that "almost chronic has been the complaint that representatives of workers on Joint Management Councils do not try to work for the betterment of the undertaking as such, but use the forum of this council for securing concessions which they would

otherwise not get." The Minister was thus unwittingly party to the propounding of the two sides to the same question.

At the 23rd Session of the Indian Labour Conference held in October 1965, the representative of the Employers' Federation of India had some caustic remarks to make about Joint Management Councils and similar bodies. According to press reports he "ridiculed the schemes of voluntary arbitration, labour participation in management and the like as 'show boys of the Labour Ministry'." He said that participation of labour in management should come about through the process of evolution. He also pointed out that workers did not want to participate in management because of internecine rivalries.

Arbitration Promotion Board: In order to reinforce the principle of voluntary arbitration, the Central Labour Ministry has been pursuing various methods of popularizing the concept. At a meeting of Labour Ministers held in July 1963 it was decided to explore the possibility of setting up tri-partite arbitration promotion boards both at the Centre and in the States. The functions of arbitration promotion boards were drawn up and placed for consideration before the Standing Committee on Industrial Truce Resolution held in August 1963, but the subject was not discussed.

The subject of voluntary arbitration and the factors inhibiting the growth of arbitration were considered at various conferences, especially in the Seminar on Voluntary Arbitration organized by the Employers' Federation of India and the All-India Organization of Industrial Employers in November 1963 and in the meeting of the Central Implementation and Evaluation Committee held in August 1964.

During his reply to the debates in the Lok Sabha in April 1965 on the demands for grants of the Labour Ministry, the Union Labour Minister announced the decision "to set up a National Arbitration Promotion Board to propagate the idea of arbitration, for evolving appropriate principles and for drawing up a panel of arbitrators."

The composition and functions of the National Arbitration Promotion Board and a set of draft model principles for reference of disputes to voluntary arbitration were submitted to the 23rd Indian Labour Conference for consideration, but the subject had to be postponed.

The idea of the setting up of a Promotion Board is sound provided that it is realized that under Indian conditions voluntary arbitration cannot be built up as speedily or as massively as the protagonists of voluntarism would desire. We have already dealt with this matter earlier. Some of the functions of the Board suggested in the draft are also open to question. One of them is "to evolve principles, norms and procedures for the guidance of arbitrators and the parties." Should not the main criterion in arbitration be acceptability to both parties rather than strict implementation of principles and norms? From this point of view, would it not be better to leave arbitrators unfettered by binding norms and principles? The principles and standards evolved in

adjudication are in any case available for consultation. There is something to be said for the practice adopted by some arbitrators in the U.S.A. and U.K., namely, of setting out the dispute in brief and then of giving the findings without adducing reasons at length in support of the findings. The reason for such a summary record is that the object is to settle a dispute and not to create case law for emulation. Under Indian conditions reasons may have to be set forth, but there is no reason why arbitrators should be bound hand and foot by strictly-defined principles and norms.

The 'Draft Model Principles for Reference of Disputes to Voluntary Arbitration' lay down what disputes "may not" be referred to voluntary arbitration and what "should normally be referred" to arbitration. Such lists are necessary when some measure of compulsion is going to be applied on one or more of the parties. If parties are willingly prepared to submit a dispute to arbitration, why should any model principle prevent them from doing so on the ground that there is a strike or lock-out which has been declared illegal by a court? On the other hand, the Arbitration Promotion Board could, over a period of time, draw conclusions from studies made that certain types of disputes lend themselves to easy and trouble-free arbitration. It is unnecessary to examine the "Model Principles" in detail because it confronts voluntarism with a number of unnecessary shackles. The cause of voluntary arbitration will not be served by having too many restrictive regulations. This does not mean that there should not be a minimum of procedural guidance, such as is envisaged in section 10A of the Industrial Disputes Act. Voluntary arbitration is a new thing in industrial relations matters for India. The best service that we can render to the cause of voluntary arbitration is not to weigh it down with fetters of our fancy but to allow it to grow naturally untrammelled by too many restrictions.

Social Responsibilities of Trade Unions: A National Seminar on "The Social Responsibilities of Trade Unions" was held at New Delhi from 29 to 31 March 1966, by the India International Centre, New Delhi, and the Gandhian Institute of Studies, Varanasi. The Seminar was attended by representatives of labour, of managements, of governments, and of other interested parties such as economists, academicians, etc.

The Seminar's work was divided into four themes, namely,

(1) Trade unions and the community,
(2) Internal responsibilities of trade unions,
(3) Responsibilities of trade unions in a dynamic socio-economic structure, and
(4) Labour's contribution to the formulation of social and economic policies.

The discussions were apparently on a high and elevated plane, but whether

they took note of present-day stark realities is more than one can say. For instance on the subject of trade unions and the community, it was no doubt mentioned that while there were bound to be conflicts of interests between trade unions and employers, there were areas of common interest which were much larger. Whether the experience of frequent "bandhs" and large-scale and crippling strikes accorded with this optimistic view was touched upon but not pursued to its logical conclusion. While legitimate protest can obviously be understood, the large-scale violence and destruction of property ill-accords with the theory of exploring areas of common interests.

Some, at any rate, of the speakers pointed out that while everyone swore by the need to create strong and self-reliant trade unions, there was very little done all these years to stimulate the growth of trade unions as strong institutions. They said that instead of providing basic institutional protection to unions, Government's policies had aimed at taking over union problems under its own wings. The protective instinct on the part of Government had smothered all scope for self-advancement on the part of unions. Unions had remained protegés eternally, not mature enough to be exposed to the hazards of independent existence amidst a hostile and exploiting world. Every aspect of a union's normal functioning—whether it be wages or bonus or welfare or anything else—had been subjected to regulation through numerous laws and law-enforcing agencies.

At the end of the Seminar a Declaration on the Social Responsibilities of Trade Unions was drawn up and approved. The main points dealt with in the Declaration may be summarized. Trade unions should consciously strive to function as strong democratic and free institutions without being dictated to by outside groups. They should improve their internal administration, strive to resolve the problems of rivalry and work for the creation of a unified trade union movement. The present rates of union subscription are already low and will be found to be especially so if trade unions have to discharge increasing responsibilities. Fixation of higher subscription rates and greater attention to the recovery of union dues will improve their finances. Unions must train the workers and enable them to assume positions of leadership and responsibility in the movement. There is need for improving communications within the trade union movement both between leadership and the rank-and-file membership and also between the national federation and the affiliated unions, so that the difficulties and aspirations at the unit level are adequately appreciated at the national level, and the obligations accepted at the national level could be implemented at the unit level.

Unions should not only ensure minimization of industrial strife but promote trust and confidence between labour and management. This is a task the responsibility for which has to be mutual. In recent years there has been a welcome emphasis on tri-partite discussions at various levels.

The trade union movement has a special responsibility towards unorganized sectors of the working class in the rural and urban sectors.

An important responsibility which trade unions have towards the community is for the promotion of emotional integration. It will be for the trade unions to give a lead to the community in strengthening the cohesive forces within itself.

The community can be helped by trade unions when they offer responsive cooperation to management in improving levels of production and productivity. In this task, the initiative may have to come from the management. Workers' gains can arise mainly from the strength and dynamism of the economy, the enduring basis for which is provided by a rising level of productivity.

In the same area of responsibility are the questions of maintaining discipline at the work place and ensuring high standards of quality of production.

Economic development is accompanied by extensive technological changes involving human problems, such as the acquisition of new skills, the displacement and deployment of workers, the sharing of benefits and so on. The trade unions will have to study and tackle the problems of technological change at the unit level, each on its merits, and will have to guard the interests of their members consistent with the need of development.

The task of influencing the socio-economic policies of the community must have high priority for the trade union movement. For this purpose the trade unions must equip themselves by undertaking extensive research activities.

At present there are not enough opportunities for the trade union movement to participate in the formulation of public policy and its implementation. What is needed is a continuing dialogue between the trade unions as a distinct group and the authorities responsible for the formulation of public policy.

Trade unions recognize the dangers involved in the tardy progress of social and economic development in the country. As a part of the community they will consider it their duty to contribute to the maximization of efforts to secure a progressive and stable social order.

The Declaration is an expression of noble intentions evolved by high-souled intellectuals meeting in an atmosphere largely free from the usual tri-partite sectarian wrangles. How far the present-day type of trade unionism can aspire to these lofty ideals was obviously not a matter for consideration by the Seminar. When the Declaration says that trade unions should not be dictated to by outside groups, it but lightly alludes to a problem which, in these pages, we have held to be fundamental. The reference to the problems of rivalry and of the creation of a unified trade union movement is, again, a mere pointer to another deep-seated malady.

Indian trade unions have a long, long way to go before they can reach a stage when the implementation of the recommendations of the Declaration can become a meaningful aspiration.

Administrative Dimensions of Labour Legislation: Mention must also be

made of another important seminar held under the auspices of the Sri Ram Centre for Industrial Relations, New Delhi, in Simla from 7 to 11 May 1966. This seminar too was attended by trade union leaders, management representatives, economists, administrators and academicians. The subject was divided into four parts, the first of which dealt with labour as a specialized branch of administration and the other three parts, with the internal problems in the administration of labour laws of Government, of unions and of managements. Attention was directed towards a vast variety of subjects and naturally examination of problems tended to be diffused. Many of the well-known areas of labour problems were covered, and no participant was at a loss to say something about something.

The gap between "determining" a goal and "achieving" it was discussed. The conflicting qualities of a law were mentioned. A protective law, for instance, might turn out to be one causing endless delays and weakening trade unionism. A law intended to provide workers with bonus might end up by giving bonus to lawyers.

An interesting subject discussed was "Administrative discretion under labour laws" and its impact on industrial relations. While the necessity for allowing administrative discretion was conceded, suggestions were made to ensure that administrative discretion should be exercised in a fair and objective manner rather than in a capricious or whimsical way.

Judicial delays in administering labour laws came in for bitter complaints. Many suggestions were made including the fixation of time limits, discouragement of adjournments, increase in the number of judges, etc.

It was agreed that the intention of the law was not peace at any cost but equity and fair play. This would forbid resort to pressure tactics during conciliation.

An impractical suggestion, under Indian conditions, was the role of trade unions as law-enforcement agencies. This cannot work in the present state of labour-management relations in the country.

The role of welfare officers received a considerable amount of attention. The labour officer, it was mentioned, often ended up as a personnel officer, dealing with management functions. One diagnosis was that this was due to the statutory imposition of a welfare officer on management. Such imposition produced the inevitable reaction of the rejection of the individual as a welfare officer.

The question whether strike was an unmixed evil received considerable attention. The conclusions were that the goal of "industrial peace at all costs" was wrong, that strikes were not "always bad", and that often strikes led to the forging of lasting bi-partite relationships. Without the sanction of strike, bi-partite relationship was unlikely to flourish.

Rivalry was recognized as an inevitable evil at the present time—something that could not be eliminated altogether and would have to be lived with. The best remedy possible was to recognize unions which had the largest

memberships. This obviously was an issue-evading conclusion. As we have seen in earlier chapters, rivalry has many ramifications.

Voluntarism was not a subject that could be ignored. It was recognized that despite all the codes and non-statutory devices, there had been little acceptance of voluntarism or meaningful bi-partite relationships. The Joint Management Councils had proved a failure. Participants felt extremely doubtful whether the parties and governments were at all sincere in their professions of voluntarism. The seminar did not make any constructive suggestions for the encouragement of voluntarism. The following comments in this context are interesting: "The effectiveness of any procedure, voluntary or legislative, seemed to vary with the time for which it maintains its novelty to the users. Conciliation machinery, industrial tribunals, and other instruments in the earlier stages of their work went on unhampered till they reached a point when employers and workers felt the need for introducing a change in their outlook through intervention by superior seats of justice. Voluntary arrangements have had the same fate."

If seminars of the types mentioned above became popular, we would have gained a valuable medium for the study of complicated and controversial problems in the industrial relations and labour economics fields.

Proposal for a National Commission on Labour: The Central Labour Minister has announced his intention to set up a National Commission on Labour for making a survey of labour policy, legislation and administration, more or less on the lines of the survey made by the Royal Commission on Labour in the 1930's. That this proposal has not come a day too early may be seen from the fact that the number of labour problems which have defied rational and acceptable solutions has vastly increased over the years since independence. Labour Ministers of independent India have had to administer their responsibilities under serious handicaps; they have often had to evolve policy in an atmosphere not too conducive to any objective study of problems based on the fruits of research made elsewhere and too often surcharged with the compulsions of the moment. Policy has, therefore, inevitably drifted hither and thither—now veering towards increased state intervention, now towards bi-partite negotiations and collective bargaining; now depending on formal legislation, and now again on voluntary codes and conventions. No wonder the Labour Minister should deem it a blessing if an informed and objective study could be undertaken by a high-powered body—a study which could lead to a public discussion of the problems and to the evolution of a policy which would not conflict with the requirements of planned development for some decades to come.

It is, however, not going to be easy to set up a National Commission which would be able to function as effectively as the Royal Commission of the 1930's. The Whitley Commission made a grand success of its job no less by the eminence of its members than by the spirit of cooperation with which

all members worked towards the final result. The personality of the Chairman contributed greatly to the smooth functioning of the Commission. There was hardly any possibility of violent differences of opinion within the Commission. The new National Commission will reportedly be tri-partite or even quadri-partite in character, consisting of representatives of labour, of management, of governments, and even of academic and public interests. Our experience of tri-partite committees in their grappling with controversial matters has not been uniformly satisfactory. The recent session of the Indian Labour Conference held in July 1966 will serve to remind us of how much of heat, misunderstanding, challenges, and protests can be imported into the consideration of a single question relating to disciplinary action. Such differences of opinion and unwillingness to compromise may not be an unmitigated evil when one's effort is to reconcile diametrically opposite points of view, but at the same time an irreconcilable wrangle may not be the ideal arrangement for a dispassionate and objective survey and study of trends and developments since the 1930's. The Committee on Profit-sharing, as far back as 1948, produced no less than six dissenting notes to the main report which covered barely twelve pages. Its modern counterpart, the Bonus Commission of 1964, produced a lengthy and vigorous minute of dissent from the private sector employers' representative. A recent wage board decision was supported by a majority of members drawn from the workers' representatives and independent members. The employers' representatives opposed the decision, while the Chairman felt it unnecessary to cast his vote. The workers' representatives themselves, representing different organizations, have often warred among themselves. When on even comparatively simple matters the present pattern of tri-partite composition has led to much antagonistic results, it is far too much to expect anything even remotely resembling a consensus in the matter of a survey of the fundamentals of labour-management relations from a commission similarly constituted.

The value of this Commission will be as much in the field of investigation and study as in that of formulating recommendations for the future. The drawing of correct conclusions from the results achieved and the facts ascertained will be one of its major tasks. If the conclusions themselves are wrong, further policy-making must be on shaky and uncertain foundations.

It is, therefore, suggested that this Commission be composed largely of persons not actively identified as partisans belonging to either group, employer or labour, or as their immediate representatives. This does not mean that nobody whose natural sympathies are with labour or capital should find a place in the Commission. An elder statesman, for instance, who was formerly in the labour ranks, but is no longer actively so, can be expected to consider problems with an interest undiminished with the passage of time and yet with a detachment possible only because of his keeping himself aloof from current controversies. Similarly there can be found many progressive persons who are familiar with, and sympathetic towards, the view-points of employers and

yet are not closely associated with them at the present time. In other words the Commission should have knowledgeable and sympathetic persons but not active and direct representatives. Moreover it should have a preponderance of members uncommitted to labour or capital. Eminent economists, administrators, and legislators, not required to toe any pre-determined line, would be a valuable asset for the Commission. The public have great stakes in the evolution of a proper relationship which will tend to support, and not thwart, national aspirations, efforts, and sacrifices. Even in the United States, the land of comparatively uninhibited private enterprise, a high-powered study group investigating "The Public Interest in National Labour Policy" came to the conclusion that "the public stake in solutions to labour problems is a great one and appears in subtle forms as well as in the more obvious one of strike losses." There is nothing wrong in laying down that even in a labour commission the public must have a large voice if the recommendations of the commission are going to affect public interests vitally. For the National Labour Commission, composition is at least as important as terms of reference. This Commission is after all an investigating and advisory body, and though it would be concerned with the shaping of future policy, it is not a body charged with the duty of taking final decisions. The usual consultative tri-partite bodies should eventually discuss the recommendations of the Commission and have their full say before Government takes final decisions and evolves specific policies.

The terms of reference of the Commission are, of course, important. More harm than good will result from restricting the scope of activities of the Commission to suit what may mistakenly be considered to be the settled long-term policies of the Government. Every controversial, or even merely important, matter should unreservedly be available for the consideration of the Commission. An important matter for consideration would be whether the policies adopted by the Government since Independence have been proper and realistic both from the short-term and long-term points of view and whether they need any change for building up a proper climate of labour-management relations consistent with the success of the Five Year Plans. The various controversies in the field of labour economics, especially the alleged low productivity of the Indian worker and the responsibilities of both labour and management for it, the feasibility and methods of raising productivity, unit labour costs in Indian industry as compared to such costs in other countries, the responsibility, if any, of high unit labour costs for our inability to compete in world markets, a proper wage structure and its relationship, if any, to productivity on the one hand and to cost of living on the other, the ability of the economy to provide a need-based minimum wage to all workers even in the less prosperous industries, the feasibility of a national minimum, the capacity and responsibility of Indian industry for meeting labour's expectations of a steadily-rising level of real wages, the role of the annual bonus in the scheme of remuneration of the worker, the reasons why

trade unions have not become strong, self-reliant and responsible, the necessity for the continued availability of compulsory arbitration, the role and importance of collective bargaining in the field of labour-management relations, the likelihood of collective bargaining becoming a way of life in industrial democracy when compulsory adjudication still remains on the statute book, and several others will have to receive the Commission's attention. One can only hope that the controversies of the market place will not affect the final judgment in regard to these difficult problems.

Report of the Steering Group on Wages, Incomes and Prices: Even as the last portions of the book are being sent to the press, word has been received of the publication of the report of the Steering Group on Wages, Incomes and Prices set up by the Governor of the Reserve Bank in June 1964. To the public at large this is the first intimation that the problem of an incomes and prices policy has not altogether escaped the attention of everybody. The report says that it is only a "framework" providing "tentative guide lines" for consideration in the formulation of an incomes and prices policy and that it does not seek to furnish precise answers to the many issues of such a policy. It is obvious that a detailed policy in this highly controversial and uncertain field, which would necessitate the canvassing of public opinion on a large scale, can be evolved only by the Central Government.

Though the framework is far too general and in parts indefinite or even internally inconsistent, it has done well to draw attention to certain basic issues. One such is that if the basic fiscal and monetary outlook is inflationary and disruptive of external balance, an incomes and prices policy will be largely infructuous and inadequate by itself to restore the balance of the economic system. This goes to the very root of the malady of unrealistic planning in recent times. The report goes on to say that with adequate fiscal and monetary policies an incomes and prices policy may have only a limited role to play. Both these statements, taken separately, are logically sound and yet, read together, would tend to show that an incomes policy as such has really no role to play. If it is ineffective in one set of circumstances, it is unnecessary and redundant in the other. Faced with this dilemma, the authors of the report might have examined the Keynesian theory for any possible justification for an incomes policy in the present context of the country's economy characterized by an inflation which threatens to wipe off what little benefits planned development has brought us during the last fifteen years. That theory says that variations in the general price level are caused by variations in the overall balance of the supply and demand of goods and services. If in a free market the incomes and the consequent private consumer demand for goods and services rise faster than real production, prices must necessarily rise. So to bring demand and supply back to equilibrium with prices remaining stable, either the incomes should be reduced through the implementation of a suitable policy or the rate of real production of goods and services should be

stepped up if that is possible. The latter may be difficult and may not be feasible in the short run. Sometimes increased production, even if possible, may give rise to a corresponding measure of increased earnings with the consequence that the resultant demand and supply will still be in disequilibrium. Until productivity and total production can be raised in such a way as to absorb a higher private consumer expenditure, a policy of induced or enforced restriction of incomes may be necessary to bring about a measure of balance between demand and supply. This is the only way to keep inflation under check, which is the main objective of an incomes policy. A curb on incomes might appear at first sight to amount to depriving somebody of his rights, but it should, in the final analysis, make no difference to one's entitlement to a due share in the available goods and services. It is all a question of the same volume of goods and services being available for purchase for the total money available with consumers—whether this be high or low.

An important point stressed in the report—which is so often ignored—is that an objective of an incomes and prices policy should be to generate from domestic income the savings necessary for ensuring non-inflationary financing of investments. This necessitates the regulation of the growth of disposable incomes so that it does not exceed the rate of growth of productivity per labour unit and is not out of accord with the pace of growth of *per capita* consumption so that the necessary savings could materialize.

One may readily agree with the Group's recommendation that "as a general rule, we should aim at regulating movements in money incomes so as to keep incomes in step with trends in national productivity moderated to some extent by the need to maintain a growth of consumption slower than productivity." This follows from the necessity to keep supply and demand in balance while providing for a measure of investment and is in line with the practice that has steadily gained ground in the United States after World War II, under which real wages, including non-wage benefits, are made to vary in step with long-term trends in the output per man-hour for the economy as a whole. It is, however, widely recognized that productivity (or in actual practice output per man-hour) is only one of the factors to be taken into account in determining wage movements, but while other factors may enter into the picture and even prove largely decisive, the outer limit to wage increases would be set by the extent of the productivity change. The Group's suggestion that in measuring productivity "a five years' moving average of the rate of change of productivity in the economy would be a good general guide for regulating changes in money wages" may be open to two objections. First, the statistics necessary for the calculation, year after year, or a five years' moving average may not be readily available and perhaps could not be built up in time to keep the average up to date. Secondly—and this is an even more serious objection—trends in output per man-hour are considered to have most significance only when they cover long periods of time. Short-term changes are very irregular and are influenced by many special factors such as the total volume of economic

activity, cyclical variations in productivity, etc. American experience shows (vide Jules Backman: Wage Determination) that when the long-term average gain in productivity in manufacturing industries was 3 per cent, annual changes ranged from a decline of 6.9 per cent to a rise of 14.9 per cent, with rises in the neighbourhood of the long-term average in only 9 out of 32 years examined. A five-year period may, therefore, prove too short and, if adopted, might produce many surprises. What an appropriate long term would be under Indian conditions in order to eliminate the erratic influences of short-term changes is a matter for careful study. Jules Backman says (page 212) that "Despite this (mentioned above) highly uneven experience from year to year, the annual improvement factor approach utilizes average long-term gains in the *past* as the basis for uniform annual increases in wage rates in the *future*." This has been accepted by several but not all employers. Some have objected to reliance on past figures for future operations. If, however, the long-term gains in the past could be used, one would at least be spared the ordeal of securing the statistics currently needed for calculating a moving five years' average.

Similarly it is open to doubt whether the suggestion that "employees in those sectors where productivity rises faster than the national average may have a claim to get increases in wages somewhat higher than the national average increase in productivity, especially where this is warranted by the contribution of labour to productivity" and the converse proposition relating to sectors where productivity rises less than the national average are in line with current thinking on the subject. If labour has directly contributed to productivity in an establishment, it must be suitably rewarded through an incentive system of payment. There need be no hesitation in accepting the propriety of such payments, for increases in wages which do not raise unit labour costs are not inflationary. So our present consideration should be limited to situations in which productivity changes in particular sectors either above or below the national average increase in productivity are caused for reasons not directly attributable to the contribution of labour. One view is that such variations in sectoral productivities are more often due to factors peculiar to the sectors such as the level of investment, the level of technology, the extent of automation, the demands for products, etc., and that if they are reflected in the wages of labour, unjustifiable and disturbing imbalances would creep into the wage structure as a whole. We have dealt with certain aspects of this problem in the section entitled 'Wages in Relation to Productivity.' While the increase in the general level of wages should be in line with the average increase in productivity for the economy as a whole, it is often recognized that in particular industries changes in the level of wages could, to a certain extent, take into account the changing conditions of demand for labour. But the precise measure of the productivity of those industries, either above or below the national average, would itself not justify a correspondingly higher or lower level of wages than the level justified by the national average.

The Steering Group has, for convincing reasons, ruled out the feasibility of fixing a national minimum or a national maximum for incomes. Progress towards a national minimum has, therefore, to come largely through increases in investment, employment and productivity—not in any one sector but in all sectors taken together.

The Steering Group has rightly recognized that policies aimed at the implementation of one objective of the planned economy may be such as to defeat another. This is a serious problem, the importance of which is not to be minimized. For instance a policy of equitable distribution of the national product may affect savings and investment, while a policy of enlarging the incomes of agricultural producers may put up prices and the cost of living, thereby necessitating the grant of higher wages in the industrial sector. This may lead to inflation. Or again, as the report says, the profits of the industrial sector have to provide the sinews of expansion in a growing economy and the rate of profitability of industry has to be maintained to sustain the growth of the economy; but a price policy conducive to this cannot ignore the impact of the growing volume of profits on economic concentration. In view of these natural conflicts, neither the incomes and prices policy, when one is eventually evolved, nor national planning can escape the arduous and unpleasant exercise of fixing, for the immediate future, relative priorities as among the desirable objectives. In the interests of one objective of compelling importance in the current context, another may have to be temporarily slowed down or even sacrificed. It is to be feared that though the Steering Group has drawn attention to these possible conflicts, it has done little to resolve them.

An incomes and prices policy is not evolved as a pure exercise in economic thinking. That an incomes policy "can succeed in its objective much better in a stable economic environment brought about by a conjuncture of sound economic policies and with a consensus reached among the major socio-economic groups", as pointed out in the report, is small consolation to us for if we had a stable economic environment, there would probably have been no need for a State-sponsored incomes policy. The stability of the economy would itself be sufficient guarantee that prices and incomes are in a state of desirable balance. The evolution of a positive policy has become urgent in the context of the inflation afflicting the economy, i.e., in an economic environment which is not stable. It is to be hoped that the Steering Group has gone to the root cause of the present troubles, for that alone would show where the remedy lies. The summary says that "the impact of a rise in money incomes generated by new investment is severely felt on wage goods, principally food-grains" and that "since food forms a significant proportion of the expenditure of the wage earners, the wage rates in an expanding industrial sector tend to move up thereby transmitting an initial sectoral imbalance to the general economy in the form of inflationary pressures, which is what seems to have happened in India during the last decade." What this argument comes to is

that the production of foodgrains has been wholly inadequate and that with the large amounts of money pumped into the system as a result of new investment, foodgrain prices, and following these other prices, have soared leading to inflation. The basic complicating factor here is the shortage of foodgrains, for if foodgrains were available in plenty, the mere availability of large sums of money with consumers would not succeed in continually raising foodgrain prices. If this is the correct situation, all talk of a price policy and consequently of an incomes policy would be meaningless if steps were not taken to provide food in sufficient quantities. Pending substantial improvement on the food front, a prices and incomes policy may succeed to a limited extent in stemming the tide of inflation.

The report of the Steering Group can form a valuable starting point for the evolution of an incomes and prices policy provided action to evolve such a policy is taken by Government before the situation gets completely out of control.

THE CODE FOR DISCIPLINE IN INDUSTRY

I *To Maintain Discipline in Industry (Both in Public and Private Sectors)*

There has to be (*i*) a just recognition by employers and workers of the rights and responsibilities of either party, as defined by the laws and agreements (including bi-partite and tri-partite agreements arrived at all levels from time to time) and (*ii*) a proper and willing discharge by either party of its obligations consequent on such recognition.

The Central and State Governments, on their part, will arrange to examine and set right any shortcomings in the machinery they constitute for the administration of labour laws.

To Ensure Better Discipline in Industry

II. *Managements and Unions Agree*

(*i*) that no unilateral action should be taken in connection with any industrial matter and that disputes should be settled at appropriate levels;

(*ii*) that the existing machinery for settlement of disputes should be utilized with the utmost expedition;

(*iii*) that there should be no strike or lock-out without notice;

(*iv*) that affirming their faith in democratic principles, they bind themselves to settle all future differences, disputes, and grievances by mutual negotiation, conciliation and voluntary arbitration;

(*v*) that neither party will have recourse to (*a*) coercion, (*b*) intimidation, (*c*) victimization or (*d*) go-slow;

(*vi*) that they will avoid (*a*) litigation: (*b*) sit-down and stay-in strikes and (*c*) lock-outs;

(*vii*) that they will promote constructive cooperation between their representatives at all levels and as between workers themselves and abide by the spirit of agreements mutually entered into;

(*viii*) that they will establish, upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to settlement;

(*ix*) that they will abide by various stages in the grievance procedure and take no arbitrary action which would bypass this procedure; and

(*x*) that they will educate the management personnel and workers regarding their obligations to each other.

III. *Managements Agree*

(*i*) not to increase workloads unless agreed upon or settled otherwise;
(*ii*) not to support or encourage any unfair labour practice such as (*a*) interference with the right of employees to enroll or continue as union members, (*b*) discrimination, restraint or coercion against any employee because of recognized activity of trade unions and (*c*) victimization of any employee and abuse of authority in any form;
(*iii*) to take prompt action for (*a*) settlement of grievances and (*b*) implementation of settlements, awards, decisions and orders;
(*iv*) to display in conspicuous places in the undertaking the provisions of this Code in the local language(s);
(*v*) to distinguish between actions justifying immediate discharge and those where discharge must be preceded by a warning, reprimand, suspension or some other form of disciplinary action and to arrange that all such disciplinary action should be subject to an appeal through normal grievance procedure;
(*vi*) to take appropriate disciplinary action against its officers and members in cases where enquiries reveal that they were responsible for precipitate action by workers leading to indiscipline; and
(*vii*) to recognize the union in accordance with the Criteria (Annexed) evolved at the 16th Session of the Indian Labour Conference held in May 1958.

IV. *Unions Agree*

(*i*) not to engage in any form of physical duress;
(*ii*) not to permit demonstrations which are not peaceful and not to permit rowdyism in demonstrations;
(*iii*) that their members will not engage or cause other employees to engage in any union activity during working hours, unless as provided for by law, agreement or practice;
(*iv*) to discourage unfair labour practices such as (*a*) negligence of duty, (*b*) careless operation, (*c*) damage to property, (*d*) interference with or disturbance to normal work and (*e*) insubordination;
(*v*) to take prompt action to implement awards, agreements, settlements and decisions;
(*vi*) to display in conspicuous places in the union offices, the provisions of this Code in the local language(s); and
(*vii*) to express disapproval and to take appropriate action against office-bearers and members for indulging in action against the spirit of this Code.

ANNEXURE

CRITERIA FOR RECOGNITION OF UNIONS

1. Where there is more than one union, a union claiming recognition should have been functioning for at least one year after registration.

Where there is only one union, this condition would not apply.

2. The membership of the union should cover at least 15 per cent of the workers in the establishment concerned. Membership would be counted only of those who had paid their subscriptions for at least three months during the period of six months immediately preceding the reckoning.

3. A union may claim to be recognized as a representative union for an industry in a local area if it has a membership of at least 25 per cent of the workers of that industry in that area.

4. When a union has been recognized, there should be no change in its position for a period of two years.

5 Where there are several unions in an industry or establishment, the one with the largest membership should be recognized.

6. A representative union for an industry in an area should have the right to represent the workers in all the establishments in the industry, but if a union of workers in a particular establishment has a membership of 50 per cent or more of the workers of that establishment it should have the right to deal with matters of purely local interest such as, for instance, the handling of grievances pertaining to its own members. All other workers who are not members of that union might either operate through the representative union for the industry or seek redress directly.

7. In the case of trade union federations which are not affiliated to any of the four central organizations of labour, the question of recognition would have to be dealt with separately.

8. Only unions which observed the Code of Discipline would be entitled to recognition.

APPENDIX II

INTER-UNION CODE OF CONDUCT

WE, THE representatives of four Central Labour Organizations, namely, I.N.T.U.C., A.I.T.U.C., H.M.S. and U.T.U.C., agree to observe the following basic principles for maintaining harmonious inter-union relations:

1. Every employee in an industry or unit shall have the freedom and right to join a union of his choice. No coercion shall be exercised in this matter.

2. There shall be no dual membership of unions. (In the case of Representative Unions, this principle needs further examination.)
3. There shall be unreserved acceptance of, and respect for, democratic functioning of trade unions.
4. There shall be regular and democratic elections of executive-bodies and office-bearers of trade unions.
5 Ignorance and/or backwardness of workers shall not be exploited by any organization. No organization shall make excessive or extravagant demands.
6 Casteism, communalism and provincialism shall be eschewed by all unions.
7 There shall be no violence, coercion, intimidation, or personal vilification in inter-union dealings.
8 All Central Labour Organizations shall combat the formation or continuance of Company Unions.

2 It was generally felt that machinery consisting of representatives of the four Central Labour Organizations, with an independent Chairman, might be set up for implementing the Code of Conduct. For the time being, Shri Nanda, the Union Labour Minister, might invite the parties, from time to time, for further developing and amplifying the Code.

APPENDIX III

DRAFT OF CODE OF EFFICIENCY AND WELFARE

RECOGNIZING (*a*) that larger production and increased productivity are necessary for reducing cost, improving quality, strengthening the economy and raising the standard of living of the people, (*b*) that employers, workers and Government should make a concerted effort towards increasing efficiency in industry, *inter alia*, by improving industrial relations through strict observance of existing and future Codes and agreements and, (*c*) that while Government has its responsibility in creating productivity consciousness among the masses and in creating an atmosphere wherein industry can function efficiently, the cooperation between labour and management at the plant level is the one single factor which governs the plant efficiency and workers' welfare·

I. *Governments Managements and Workers Agree*

(i) that they shall do all that is possible severally and jointly to ensure the observance of the Code of Discipline in a manner that will create and maintain cordial atmosphere wherein production and productivity can progress unimpeded;

(*ii*) that they shall bring about conditions for the maximum utilization of the installed capacity of the industrial units and facilitate the running of three shifts in the industrial units on mutually acceptable basis; and

(*iii*) that they shall actively assist in the organization of training schemes and help build up specialists and research institutions for study and implementation of productivity techniques.

II. *Government Agrees*

(*i*) that it shall streamline with a vigorous productivity bias its organizational set-up and procedures dealing with matters of industrial production and development;

(*ii*) that it shall take positive measures to encourage the public sector enterprises to function more efficiently for demonstrating the productivity techniques and the benefits flowing from their introduction; and

(*iii*) that it shall consider ways and means of incorporating in the curricula of technical studies the concepts and techniques of productivity

III. *Managements and Workers Agree*

(*i*) that they shall investigate the causes of excessive absenteeism and labour turn-over and adopt suitable remedial measures;

(*ii*) that they shall encourage and support the introduction of suggestion schemes;

(*iii*) that they shall take steps to secure implementation of social legislation in the labour field and the running of welfare funds and schemes;

(*iv*) that they shall avoid waste and inefficiency and adopt and support modern productivity techniques with appropriate safeguards to labour;

(*v*) that they shall endeavour to achieve the better utilization of available resources, *inter alia*, by introduction of suitable incentive payment schemes;

(*vi*) that they shall cooperate in the efficient maintenance of machinery and equipment;

(*vii*) that they shall establish an effective machinery for cooperation at the level of the undertaking with a view to effective implementation of this Code; and

(*viii*) that they shall take steps to improve industrial health and safety of workers through preventive measures.

IV. *Managements Agree*

(*i*) that they shall continuously strive to secure improvement in the standard of living of workers through improvement, *inter alia*, in the working conditions, environment and welfare measures including housing, and thus bring about conditions which will enable the workers to give of their best;

(*ii*) that they shall make positive efforts to generate an atmosphere of

mutual trust and cooperation and take initiative to dispel misapprehensions among workers in regard to productivity techniques and measures;

(*iii*) that they shall ensure that workers receive their due share of the gains resulting from increased productivity;

(*iv*) that they shall organize training programmes for all levels in their enterprise; they shall also undertake re-training of workers when deployed;

(*v*) that they shall associate the workers in the implementation of laws and regulations regarding health and safety in the undertaking;

(*vi*) that they shall give facilities to workers for participating in the administration and supervision of schemes for the welfare of workers in the undertaking; and

(*vii*) that they shall afford the workers facilities for checking standards of performance and workload.

V. *Workers Agree*

(*i*) that they shall not resort to restrictive practices or to activities which would involve loss or reduction in the quality and quantity of production;

(*ii*) that inter-union or inter-craft rivalries shall not be allowed to interfere with efficiency in production and that towards this end they shall strictly abide by the Inter-Union Code of Conduct;

(*iii*) that they shall cooperate with the management in undertaking experiments in productivity techniques;

(*iv*) that they shall provide appropriate machinery within their organization for (*a*) educating the workers in their rights and responsibilities in regard to production, (*b*) dispelling from the rank and file membership misapprehensions in regard to productivity techniques;

(*v*) that they shall ensure maximum participation in the programme of Workers' Education and shall seek expansion of such facilities; and

(*vi*) that in making demands on Industry they shall bear in mind the need to maintain competitive costs of production in the larger interests of the community.

APPENDIX IV

GRIEVANCE PROCEDURE

THE 16TH Session of the Standing Labour Committee decided that a satisfactory grievance procedure should be worked out by Government and placed before the Subcommittee on Worker Participation in Management and Discipline in Industry set up by the Indian Labour Conference. The Code for Discipline in Industry which

was also adopted at this Session required that the management and unions will establish, upon a mutually agreed basis, a grievance procedure which will ensure a speedy and full investigation leading to a settlement. Accordingly, a meeting of the Tri-partite Subcommittee was held in March 1958 to consider the draft of the Guiding Principles for a Grievance Procedure and a Model Grievance Procedure. The Committee finalized the Model Grievance Procedure at its subsequent meeting held in September 1958.

The text of the Guiding Principles and the Model Grievance Procedure as finally adopted are reproduced below:

Guiding Principles for a Grievance Procedure: Existing labour legislation does not provide for a well-defined and adequate procedure for redressal of day-to-day grievances in industrial units. Clause 15 of the Model Standing Orders in Schedule I of the Industrial Employment (Standing Orders) Central Rules 1946 specifies that "All complaints arising out of employment including those relating to unfair treatment or wrongful exaction on the part of the employer or his agent, shall be submitted to the manager or the other person specified in this behalf with the right of appeal to the employers."

In some industrial units, however, detailed grievance procedures have been worked out by mutual agreement. In the absence of a satisfactory grievance procedure, day-to-day grievances are allowed to pile up with the result that the accumulated discontent culminates some time or the other in cases of indiscipline, strikes, etc. In what follows, therefore, an attempt has been made to draw up Guiding Principles for a Grievance Procedure. It is realized that it may not be possible to apply all these principles in respect of each and every industrial unit. However, all units should endeavour to conform, as much as possible, to these principles.

Complaints affecting one or more individual workers in respect of their wage payments, over-time, leave, transfer, promotion, seniority, work assignment, working conditions and interpretation of service agreement, dismissals and discharges would constitute grievances. Where the points at dispute are of general applicability or of considerable magnitude, they will fall outside the scope of this procedure.

A Grievance Procedure should take note of the following principles:

1 *Conformity with Existing Legislation*: A Grievance Procedure forms part of the integrated scheme intended to promote satisfactory relations between employers and workers. This procedure should be designed to supplement the existing statutory provisions and it may, where practicable, make use of such machinery as is already provided by legislation.

The Grievance machinery can be availed of on the receipt by the worker of the order causing a grievance. The operation of the order, however, need not be held up till the grievance machinery is completely exhausted. Wherever possible, attempts should be made to

complete the grievance procedure between the time the order is passed and when it is acted upon.

2. *Need to Make the Machinery Simple and Expeditious*:

   (*a*) As far as possible grievances should be settled at the lowest level.
   (*b*) No matter should ordinarily be taken up at more than two levels, i.e., normally there should be only one appeal.
   (*c*) Different types of grievances may be referred to appropriate authorities.
   (*d*) A grievance must be redressed as expeditiously as possible and towards this end, the employer, in consultation with the workers, should decide upon the time limit required for settling a grievance

3 *Designation of Authorities*: The workmen must know the authorities to be approached and it should, therefore, be incumbent on the management to designate the authorities to be contacted at various levels.

It may be useful to classify grievances as those arising from personal relationship and others arising out of conditions of employment. In the former case, a grievance should be taken up, in the first instance, with the authority in the line management immediately above the officer against whom the complaint is made. Thereafter, the matter may go to the Grievance Committee comprising representatives of management and workers. The size and composition of the Committee shall be decided at the unit level (see Annexure below).

Other grievances should be taken up, in the first instance, with the authority designated by the management. Thereafter, a reference may be made to the Grievance Committee.

Where the matter goes to the Grievance Committee in the first instance, an appeal shall lie with the top management.

ANNEXURE

CONSTITUTION OF GRIEVANCE COMMITTEE

1 *In the Case where the Union is Recognized*

Two representatives of management plus a Union representative and the Union departmental representative of the department in which the workmen concerned work.

2. *In the Case where the Union is not Recognized or there is no Union but there is a Works Committee*·

Two representatives of management plus the representative of the depart-

ment of the workman concerned on the Works Committee plus either the Secretary or Vice-President of the Works Committee (this is in case the Secretary of the Works Committee is also the workman's departmental representative).

It is suggested that in the case of the Management, their representatives should be the Departmental Head plus the official who dealt with the matter at the first stage or the personnel officer should act as an adviser.

The size of the 'Grievance Committee' should be limited to a maximum of four to six; otherwise it becomes unwieldy.

MODEL GRIEVANCE PROCEDURE

A. *Grievance Machinery*

A Grievance Machinery will be required to be set up in each undertaking to administer the Grievance Procedure. The minimum requirements of such a machinery would be as follows, except where an established procedure is already working to the mutual satisfaction of either party. Even in the latter case, every effort shall be made to bring the procedure in conformity with the Guiding Principles.

For the purpose of constituting a fresh Grievance Machinery, workers in each department (and where a department is too small, in a group of departments) and each shift, shall elect, from amongst themselves and for a period of not less than one year at a time, departmental representatives and forward the list of persons so elected to the management. Where the union(s) in the undertaking are in a position to submit an agreed list of names, recourse to election may not be necessary. Similar is the case where Works Committees are functioning satisfactorily, since the Works Committee member of a particular constituency shall act as the departmental representative. Correspondingly, the management shall designate the persons for each department who shall be approached at the first stage and the departmental heads for handling grievances at the second stage. Two or three of the departmental representatives of workers and two or three departmental heads nominated by the management shall constitute the Grievance Committee, the composition of which is indicated in Appendix. In the case of appeals against discharges or dismissals, the management shall designate the authority to whom appeals could be made.

B. *Grievance Procedure*

While adaptations have to be made to meet special circumstances such as those obtaining in the Defence Undertakings, Railways, Plantations and also small undertakings employing few workmen the procedure normally envisaged in the handling of grievances should be as follows:

1. An aggrieved employee shall first present his grievance verbally in

person to the officer designated by management for this purpose. An answer shall be given within 48 hours of the presentation of complaint.

2. If the worker is not satisfied with the decision of this officer or fails to receive an answer within the stipulated period, he shall, either in person or accompanied by his departmental representative, present his grievances to the Head of the Department designated by the Management for the purpose of handling grievances. (For this purpose, a fixed time shall be specified during which on any working day, an aggrieved worker could meet the departmental head for presentation of grievances.) The Departmental Head shall give his answer within 3 days of the presentation of grievance. If action cannot be taken within that period, the reason for delay should be recorded.
3. If the decision of the Departmental Head is unsatisfactory, the aggrieved worker may request the forwarding of his grievance to the 'Grievance Committee' which shall make its recommendations to the Manager within 7 days of the worker's request. If the recommendations cannot be made within this time-limit, the reason for such delay should be recorded. Unanimous recommendations of the Grievance Committee shall be implemented by the management. In the event of a difference of opinion among the members of the Grievance Committee, the views of the members along with the relevant papers shall be placed before the Manager for final decision. In either case, the final decision of the management shall be communicated to the workman concerned by the Personnel Officer within 3 days from the receipt of the Grievance Committee's recommendations.
4. Should the decision from the Management be not forthcoming within the stipulated period or should it be unsatisfactory, the worker shall have the right to appeal to management for a revision. In making this appeal, the worker, if he so desires, shall have the right to take a union official along with him to facilitate discussions with Management. Management shall communicate their decision within a week of the workman's revision petition
5. If no agreement is still possible, the union and the management may refer the grievance to voluntary arbitration within a week of the receipt by the worker of Management's decision.
6. Where a worker has taken up a grievance for redressal under this procedure, the formal Conciliation Machinery shall not intervene till all steps in the procedure are exhausted. A grievance shall be presumed to assume the form of a dispute only when the final decision of the top management in respect of the grievance is not acceptable to the worker.
7. If a grievance arises out of an order given by management, the said order shall be complied with before the workman concerned invokes the procedure laid down for redressal of grievance. If, however, there is a time lag between the issue of order and its compliance, the grievance

procedure may immediately be invoked but the order nevertheless must be complied within the due date, even if all the steps in the grievance procedure have not been exhausted. It may however be advisable for the management to await the findings of grievance procedure machinery.

8. Workers' representatives on the Grievance Committee shall have the right of access to any document connected with the inquiry maintained in the department and which may be necessary to understand the merit or otherwise of the worker's grievances. The management's representatives shall have the right, however, to refuse to show any document or give any information which they consider to be of a confidential nature. Such confidential document(s) shall not be used against the workmen in the course of the grievance proceedings.
9. There shall be a time-limit within which an appeal shall be taken from one step to the other. For this purpose, the aggrieved worker shall, within 72 hours of the receipt of the decision at one stage (or if no decision is received, on the expiry of the stipulated period), file his appeal with the authority at the next higher stage, should he feel inclined to appeal.
10. In calculating the various time intervals under the above clauses, holidays shall not be reckoned.
11. Management shall provide the necessary clerical and other assistance for the smooth functioning of the grievance machinery.
12. If it is necessary for any worker to leave the department during working hours on call from the Labour/Personnel Officer or any other officer of the established grievance machinery, previous permission of his superior shall necessarily be obtained. Subject to this condition, the worker shall not suffer any loss in wages for the work-time lost in this manner.
13. If, however, there be any complaint against any individual member of the staff, who is nominated by the management to handle grievances at the lowest level, the workman may take up his grievance at the next higher stage, i.e., at the level of Departmental Head.
14. In the case of any grievance arising out of discharge or dismissal of a workman, the above-mentioned procedure shall not apply. Instead, a discharged or dismissed workman shall have the right to appeal either to the dismissing authority or to a senior authority who shall be specified by the management, within a week from the date of dismissal or discharge. At the time the appeal is heard, the workman may, if he so desires, be accompanied by either an official of the recognized union or a fellow worker, as the case may be.

APPENDIX V

MODEL AGREEMENT REGARDING ESTABLISHMENT OF COUNCILS OF MANAGEMENT

(As Modified by the First Seminar on Labour-Management Cooperation)

AGREEMENT between
(Name of employer)........................ ....
and
(Name / Names of Trade Union / Unions)....... ....

1. The Company and the Union appreciate that an increasing measure of association of employees with the Management of its works would be desirable and would help (*a*) in promoting increased productivity for the general benefit of the enterprise, the employees and the country, (*b*) in giving employees a better understanding of their role and importance in the working of the industry and in the process of production, and (*c*) in satisfying the urge for self-expression.

2. It is, therefore, agreed that a Council/Councils of Management consisting of representatives of the Management and of the employees be set up.

3. The constitution of this Council/these Councils and the procedure to be followed by it/them would be as follows:

4. It would be the endeavour of the Council/Councils (*i*) to improve the working and living conditions of the employees, (*ii*) to improve productivity, (*iii*) to encourage suggestions from the employees, (*iv*) to assist in the administration of laws and agreements, (*v*) to serve generally as an authentic channel of communication between the Management and the employees, and (*vi*) to create in the employees a live sense of participation.

5. The Council/Councils would be consulted by the Management on matters like:

(*i*) administration of Standing Orders and their amendment, when needed;
(*ii*) retrenchment;
(*iii*) rationalization;
(*iv*) closure, reduction in or cessation of operations.

6. The Council/Councils would also have the right to receive information, to discuss and to give suggestions on:

(*i*) general economic situation of the concern;
(*ii*) the state of the market, production and sales programmes;
(*iii*) organization and general running of the undertaking;

(*iv*) circumstances affecting the economic position of the undertaking;
(*v*) methods of manufacture and work;
(*vi*) the annual balance sheet and profit and loss statement and connected documents and explanation;
(*vii*) long-term plans for expansion, re-deployment, etc., and
(*viii*) such other matters as may be agreed to.

7. The Council/Councils would be entrusted with administrative responsibility in respect of:

(*i*) administration of welfare measures;
(*ii*) supervision of safety measures;
(*iii*) operation of vocational training and apprenticeship schemes;
(*iv*) preparation of schedules of working hours and breaks and of holidays;
(*v*) payment of rewards for valuable suggestions received from the employees;
(*vi*) any other matter.

8. All matters, e.g., wages, bonus, etc., which are subjects for collective bargaining are excluded from the scope of the Council/Councils. Individual grievances are also excluded from its/their scope. In short, creation of new rights as between employers and workers should be outside the jurisdiction of the Management Council.

APPENDIX VI

CONCLUSIONS OF THE COMMITTEE ON WORKS COMMITTEES

THE 17TH Session of the Indian Labour Conference held at Madras in July 1959, decided that a small tri-partite committee consisting of four representatives each of the employers and workers and a few Government representatives should be set up to examine the material on the subject of Works Committees and draw up "guiding principles" relating to the composition and functioning of Works Committees. The Committee met in New Delhi on 30 November 1959 and its conclusions are reproduced below:

1. *Functions of Works Committees*: It was agreed that it was not practicable to draw up an exhaustive list of the functions of Works Committees. There should be some flexibility of approach for the system to work properly. Illustrative lists of items which the Works Committee should normally deal with and those which it should not normally deal with were drawn up and approved (*vide* Appendix). It was agreed that the demarcation would not be rigid and the approved lists were flexible.

2. *Units in which the Works Committee should be formed*: It was agreed that no change was called for in the existing statutory provisions in the Industrial Disputes Act limiting the number of workmen to 100 for the purpose of the formation of a Works Committee.

3. *Composition of the Works Committee*: It was agreed that no change in the existing provisions of the Industrial Disputes Act or Rules regarding the number of members of the Works Committee was necessary. As regards the number of representatives it was felt that at times the management found it difficult to produce equal number of representatives as that of workers. But as, however, this was permissible even under the existing rules, no change therein was recommended.

4. *Composition of the Workers' Side of the Works Committee*: It was considered that the workers' representatives on the Works Committee should be elected by the workers without the constituencies being divided between workers who are members of a Union and those who are not members of a Union. The existing provisions regarding representation for different departments or sections should continue. As for election, the consensus of opinion was that ordinarily the employers should be responsible therefor but that where there is a dispute or an apprehended dispute or where either the employer or the workers make a specific request to the appropriate Government, a Conciliation Officer/Labour Officer deputed by that Government should supervise the election.

5. *Chairmanship of Works Committee*: It was agreed that the present provision in the Central Industrial Disputes Rules regarding the compulsory rotation of the office of the Chairman between employers and workers should be removed. At the same time it was felt that the workers' representatives should not be barred from holding that office, if suitable persons were available from their side. It was agreed that for the next three years, the Chairman should be from the management side, who should, as far as possible, be the head of the organization or factory. It was also decided that the position should be reviewed after three years

6. *Periodicity of the Meetings*: It was agreed that the present provision, i.e., having a meeting at least once in a quarter needed no change. Meetings should be held more frequently if necessary.

7. *Facilities to Works Committee's Members*: It was agreed that the Secretary of the Works Committee should have the privilege of putting up notice regarding the work of the Works Committee on the notice board of the establishment.

8. *General*: The question was raised whether Works Committees should be

established in commercial establishments also and not in factories only. It was pointed out that according to the existing provisions in the Act, Commercial establishments might form the Works Committees whenever required.

Appendix

I. *Illustrative list of items which Works Committees will normally deal with*

1. Conditions of work such as ventilation, lighting, temperature and sanitation including latrines and urinals.
2. Amenities such as drinking water, canteens, dining rooms, crèches, rest rooms, medical and health services.
3. Safety and accident prevention, occupational diseases and protective equipment.
4. Adjustment of festival and national holidays.
5. Administration of welfare and fine funds.
6. Educational and recreational activities such as libraries, reading rooms, cinema shows, sports, games, picnic, parties, community welfare and celebrations.
7. Promotion of thrift and savings.
8. Implementation and review of decisions arrived at meetings of Works Committees.

II. *List of items which the Works Committees will not normally deal with*

1. Wages and allowances.
2. Bonus and profit sharing schemes.
3. Rationalization and matters connected with the fixation of workload.
4. Matters connected with the fixation of standard labour force.
5. Programmes of Planning and Development.
6. Matters connected with retrenchment and lay-off.
7. Victimization for trade union activities.
8. Provident Fund, gratuity schemes and other retiring benefits.
9. Quantum of leave and national and festival holidays.
10. Incentive schemes.
11. Housing and transport services.

APPENDIX VII

DRAFT FUNCTIONS OF THE NATIONAL ARBITRATION AND PROMOTION BOARD

(i) To review periodically the extent of acceptance of voluntary arbitration by employers and workers.

(*ii*) To study cases where arbitration is not agreed to with a view to examining the factors inhibiting its wider acceptance and making suggestions to remove them.

(*iii*) To compile and maintain up-to-date panels of suitable persons to serve as arbitrators for different areas and industries and lay down their fees, etc.

(*iv*) To evolve principles, norms and procedures for the guidance of arbitrators and the parties.

(*v*) To advise parties in important cases to accept arbitration for resolving differences or disputes and thereby avoiding adjudication or litigation in courts.

(*vi*) To look into the difficulties experienced by parties in securing speedy settlement of disputes by arbitration and expedite arbitration proceedings wherever necessary.

(*vii*) To specify from time to time the types of disputes which would normally be settled by arbitration in the light of tri-partite decisions. The Board, in particular, may lay down norms for deciding which disputes should be considered of a local nature, or having wide repercussions or creating new rights or involving large financial stakes.

APPENDIX VIII

DRAFT MODEL PRINCIPLES FOR REFERENCE OF DISPUTES TO VOLUNTARY ARBITRATION

THE RIGHT to refer a dispute to voluntary arbitration rests with the parties concerned. Ordinarily, therefore, there should be no difficulty when both the parties to a dispute agree to refer the same to voluntary arbitration.

2. Arbitration should normally be sought when efforts to settle a dispute through mutual negotiations/conciliation have failed.

3 Disputes may not, however, be referred to voluntary arbitration:

(*a*) if there is a strike or lock-out declared illegal by a Court or a strike or lock-out resorted to without seeking settlement by means provided by law and without proper notice or in breach of the Code of Discipline as determined by the machinery set up for the purpose unless such a strike (or direct action) or lock-out, as the case may be, is called off;

(*b*) if the issues involved are such as have been the subject matter of recent judicial decisions or in respect of which unduly long time has elapsed since the origin of the cause of action.

Individual Disputes

4. Disputes covered by item II(v) of the Industrial Truce Resolution, i.e.,

those pertaining to dismissal, discharge, victimization and retrenchment of individual workmen not settled mutually should normally be referred to arbitration and in particular:

(a) if there is a case of victimization or unfair labour practices;
(b) if the Standing Orders in force or the principles of natural justice have not been followed; or
(c) if it appears *prima facie* that injustice has been done to the workers.

5. Cases of discharge and dismissal wherein breach of Code of Discipline has been established by the Implementation Machinery concerned may not be referred to voluntary arbitration.

6. Cases in which breach of the Code of Discipline has been alleged but not established may not be referred to voluntary arbitration unless the concerned officer of the Industrial Relations Machinery, dealing with the case, after investigation, *prima facie* comes to the conclusion that there is no breach of Code of Discipline involved or there is a room for doubt in reaching a conclusion as regards the breach of Code of Discipline.

7. In respect of a dispute, which either of the parties alleges to be frivolous or vexatious, the dealing officer of the Industrial Relations Machinery may not normally press the other party for its reference to arbitration unless he, after preliminary investigation, feels that the dispute merits such a reference

Collective and General Disputes

8. Disputes which do not fall in the category of individual disputes, i.e., those which concern an industry as a whole or a large number of workers or those having large financial bearing may also be referred to arbitration if the parties agree, provided the arbitrator is a person of status, i.e., a senior officer of the Industrial Relations Machinery concerned or a judicial authority including a retired judge, etc.

9. Such disputes, however, may not normally be referred to arbitration if (a) a substantial question of law is involved or (b) new rights are sought to be created which are likely to have wide repercussions.

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